133-308

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 131.

CALVIN R. CORBIN AND HORATIO N. MAY, COPARTNERS AS CORBIN, MAY & COMPANY, APPELLANTS,

vs.

WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, AND L. F. THOMPSON, COPARTNERS AS W. J. GOULD & COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 8, 1886.

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a No. 2974.

In the Circuit Court of the United States, Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.
} Bill. Infringement of Trade-Mark.

Percy L. Shuman, solicitor for complainants; Dickinson, Thurber & Hosmer, solicitors for defendants.

1 In the Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*
} In Equity.

Bill of Complaint. (*Filed Sept.* 24, 1885.)

To the judges of the circuit court of the United States in and for the eastern district of Michigan, in chancery sitting:

Calvin R. Corbin and Horatio N. May, copartners, doing business under the firm name and style of Corbin, May & Company, of Chicago, in the State of Illinois, and citizens of the State of Illinois, bring this their bill of complaint against Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, copartners, doing business under the firm name and style of W. J. Gould & Company at the city of Detroit, in the State of Michigan, citizens of the State of Michigan.

(1.) And thereupon your orators complain and say that they are the owners of a trade-mark used in commerce with foreign
2 nations and are domiciled in the United States, and that they
have been engaged for over six years in the business of buying, manufacturing, preparing, and shipping to the United States and selling in the United States and elsewhere a particular quality of uncolored, pan-dried tea, of which your orators, as copartners of one Granville S. Ingraham, under the firm name and style of Ingraham, Corbin & May, were the first and exclusive manufacturers and the first and exclusive importers and wholesale dealers in the United States; that during this entire period your orators have faithfully endeavored, by all lawful and honorable means, to acquire and enjoy an extended and desirable reputation for their tea, and to this end have devoted and employed their skill, time, experience, and energies, as well as expended large sums of money, amounting in the aggregate to many thousands of dollars; that they have annually manufactured and imported into the United States and sold during and since the year 1879 not less than six thousand packages of their tea, aggregating more than four hundred thousand pounds

annually; that by reason of your orators' efforts, as aforesaid, their tea has long been widely and favorably known and large profits have accrued to your orators, chiefly as a result of their reputation thus established and maintained, and especially on account of the reputation of your orators' tea, which has been for many years and is at present exposed to sale by your orators and their customers and agents in many of the chief cities and towns of the United States, and which has been and is at present generally known and sold as a standard article in the market in the chief and important cities and towns of the United States, and particularly in the chief and important cities and towns of the State of Michigan.

3 (2.) And your orators further show unto your honors that they are now about to receive from Japan importations of their tea, aggregating about four hundred and eighty thousand pounds, for sale in the United States and elsewhere, and that they will offer said tea for sale in the usual manner.

(3.) And your orators further show unto your honors that said particular tea so purchased, manufactured, and prepared by your orators was introduced into the American market by your orators as aforesaid about the year 1879, and became generally known as and sold under the designation of "Tycoon tea," that word "Tycoon" being properly attached to the packages or cases and coverings in which your orators' tea is imported and offered for sale; that by extensively advertising and publishing said particular tea, by means of circular and otherwise throughout the United States, very large sales thereof were speedily made in the various markets of the United States, including the cities and towns of the State of Michigan, with increasing profit, amount of sales, and success until the time when invaded by the defendants, as hereinafter mentioned.

(4.) And your orators further show unto your honors that, in order to more clearly identify your orators' manufacture or preparation of said particular tea, and the more clearly to prevent the same from being mistaken for the manufacture or preparation of others, your orators, in the year 1879, caused the packages, cases, or coverings of such particular tea prepared and manufactured and sold by your orators to be stamped, printed, or marked with the word "Tycoon," designed and used from thence hitherto as the exclusive mark and designation of your orators' manufacture and as your orators' adopted
trade-mark, one of which packages, cases, or coverings your
4 orators bring here into court, annexed to this your orators'
bill of complaint, making it part thereof, and marked "Schedule A," reference being thereto had for greater certainty.

(5.) Your orators further show unto your honors that such mark, stamp, or designation has become known as from that time unto the present used by your orators to designate the manufacture by your orators of such particular so-called "Tycoon tea;" and your orators further show and state that the said last-mentioned stamp or mark was so adopted and applied first by your orators as aforesaid as their trade-mark as aforesaid, and that the same, as your orators verily believe, had never before been used upon packages of tea or otherwise, either as by your orators employed or in such close resemblance thereto as to mislead the public or others, and that said Granville S. Ingraham, on or about the 10th day of April, 1884, sold, transferred, and conveyed unto your orators all of his right, title, and interest in and to all of the assets, property, goods, and effects of the said copartnership, including all of his right, title, and interest in and to said trade-mark word "Tycoon" of Ingraham, Corbin & May, and that your orators alone have, and no other person or persons have now or at any time since the adoption thereof by your orators as a trade-mark as aforesaid had, any right to use the same in the manner and for the purpose shown as aforesaid.

(6.) And your orators further show unto your honors that, for the purpose of obtaining protection for the exclusive right in and to their aforesaid lawful trade-mark, the said Ingraham, Corbin & May, so being the first to adopt and apply the said word "Tycoon" as a trade-mark as aforesaid, and being the owners of said trade-mark
5 used in commerce with foreign nations, and being domiciled
in the United States, in pursuance of the act of Congress in such case made and provided, did, on the 21st day of November, 1881, deposit in the Patent Office at Washington the said above-described trade-mark for registration; that the copy of the said trade-mark so deposited was accompanied by the statement required by said act and the declaration under the oath of your orator, Horatio N. May, to the effect that the parties claiming protection for the said trade-mark, to wit, your orators, had a right to the use of the same, and that no other person or corporation had the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that it is used in commerce with Japan and British North America, and the description and fac-similes presented for record were true copies of the trade-mark sought to be protected; and your orators having made the payment of the fee of twenty-five dollars in the same manner and for the same purpose as is required for patents, and having complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all respects complied with the act of Congress in such case made and provided, such proceedings were thereupon had that on the twenty-seventh day of December, in the year one thousand eight hundred and eighty-one, the said trade-mark before mentioned was registered and recorded by the then Commissioner of Patents of the United States, and a certificate thereof, under the seal of the Patent Office of the United States, was issued and delivered to your orators, and whereby protection was secured to your orators for the said trade-mark for the period of thirty years from the said twenty-
6 seventh day of December, in the year eighteen hundred and
eighty-one, aforesaid, as by the said original certificate or duly authenticated copy thereof in court to be produced will more fully and at large appear, a copy of such certificate being hereto annexed and making part of this your orators' bill of complaint and marked "Schedule B," reference being thereto had for greater certainty.

(7.) And your orators further show unto your honors that, as your orators are informed and believe, the defendants herein, annually; that by reason of your orators' efforts, as aforesaid, their tea has long been widely and favorably known and large profits have accrued to your orators, chiefly as a result of their reputation thus established and maintained, and especially on account of the reputation of your orators' tea, which has been for many years and is at present exposed to sale by your orators and their customers and agents in many of the chief cities and towns of the United States, and which has been and is at present generally known and sold as a standard article in the market in the chief and important cities and towns of the United States, and particularly in the chief and important cities and towns of the State of Michigan.

3 (2.) And your orators further show unto your honors that they are now about to receive from Japan importations of their tea, aggregating about four hundred and eighty thousand pounds, for sale in the United States and elsewhere, and that they will offer said tea for sale in the usual manner.

(3.) And your orators further show unto your honors that said particular tea so purchased, manufactured, and prepared by your orators was introduced into the American market by your orators as aforesaid about the year 1879, and became generally known as and sold under the designation of "Tycoon tea," that word "Tycoon" being properly attached to the packages or cases and coverings in which your orators' tea is imported and offered for sale; that by extensively advertising and publishing said particular tea, by means of circular and otherwise throughout the United States, very large sales thereof were speedily made in the various markets of the United States, including the cities and towns of the State of Michigan, with increasing profit, amount of sales, and success until the time when invaded by the defendants, as hereinafter mentioned.

(4.) And your orators further show unto your honors that, in order to more clearly identify your orators' manufacture or preparation of said particular tea, and the more clearly to prevent the same from being mistaken for the manufacture or preparation of others, your orators, in the year 1879, caused the packages, cases, or coverings of such particular tea prepared and manufactured and sold by your orators to be stamped, printed, or marked with the word "Tycoon," designed and used from thence hitherto as the exclusive mark and designation of your orators' manufacture and as your orators' adopted trade-mark, one of which packages, cases, or coverings your
4 orators bring here into court, annexed to this your orators'
bill of complaint, making it part thereof, and marked "Schedule A," reference being thereto had for greater certainty.

(5.) Your orators further show unto your honors that such mark, stamp, or designation has become known as from that time unto the present used by your orators to designate the manufacture by your orators of such particular so-called "Tycoon tea;" and your orators further show and state that the said last-mentioned stamp or mark was so adopted and applied first by your orators as aforesaid as their trade-mark as aforesaid, and that the same, as your orators verily believe, had never before been used upon packages of tea or otherwise, either as by your orators employed or in such close resemblance thereto as to mislead the public or others, and that said Granville S. Ingraham, on or about the 10th day of April, 1884, sold, transferred, and conveyed unto your orators all of his right, title, and interest in and to all of the assets, property, goods, and effects of the said copartnership, including all of his right, title, and interest in and to said trade-mark word "Tycoon" of Ingraham, Corbin & May, and that your orators alone have, and no other person or persons have now or at any time since the adoption thereof by your orators as a trade-mark as aforesaid had, any right to use the same in the manner and for the purpose shown as aforesaid.

(6.) And your orators further show unto your honors that, for the purpose of obtaining protection for the exclusive right in and to their aforesaid lawful trade-mark, the said Ingraham, Corbin & May, so being the first to adopt and apply the said word "Tycoon" as a trade-mark as aforesaid, and being the owners of said trade-mark used in commerce with foreign nations, and being domiciled in the United States, in pursuance of the act of Congress in such case made and provided, did, on the 21st day of November, 1881, deposit in the Patent Office at Washington the said above-described trade-mark for registration; that the copy of the said trade-mark so deposited was accompanied by the statement required by said act and the declaration under the oath of your orator, Horatio N. May, to the effect that the parties claiming protection for the said trade-mark, to wit, your orators, had a right to the use of the same, and that no other person or corporation had the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that it is used in commerce with Japan and British North America, and the description and fac-similes presented for record were true copies of the trade-mark sought to be protected; and your orators having made the payment of the fee of twenty-five dollars in the same manner and for the same purpose as is required for patents, and having complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all respects complied with the act of Congress in such case made and provided, such proceedings were thereupon had that on the twenty-seventh day of December, in the year one thousand eight hundred and eighty-one, the said trade-mark before mentioned was registered and recorded by the then Commissioner of Patents of the United States, and a certificate thereof, under the seal of the Patent Office of the United States, was issued and delivered to your orators, and whereby protection was secured to your orators for the said trade-mark for the period of thirty years from the said twenty-seventh day of December, in the year eighteen hundred and eighty-one, aforesaid, as by the said original certificate or duly authenticated copy thereof in court to be produced will more fully and at large appear, a copy of such certificate being hereto annexed and making part of this your orators' bill of complaint and marked "Schedule B," reference being thereto had for greater certainty.

(7.) And your orators further show unto your honors that, as your orators are informed and believe, the defendants herein, Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, confederating with divers other persons in different parts of the United States since the said word "Tycoon" was applied by your orators as their trade-mark, and since the date of such registration of the same as a trade-mark as aforesaid, with full knowledge of your orators' rights and in violation thereof, without your orators' consent, and with the intent fraudulently to divert to themselves the trade enjoyed by your orators in the manufacture or preparation and sale of such particular tea, have made and sold and put upon the market in the city of Detroit and elsewhere large quantities of tea in packages or cases in size, shape, outer color, and appearance like those of your orators, and have stamped or printed or marked the word "Tycoon" in imitation of your orators' said trade-mark on such packages or cases or coverings, which imitation and copy by the said defendants is calculated and intended to deceive and mislead the public and the casual observer into the belief that said packages and cases or coverings, facings or labels, were those of your orators, and thereby to pass said goods and tea of said W. J. Gould & Company off upon buyers as the goods and tea of your orators' manufacture or preparation and sale, and thus universally to appropriate the reputation, good-will, and trade of your orators.

7 (8.) And your orators further show unto your honors that they bring now here into court and annex to this their bill of complaint and make part thereof one of the packages or cases or coverings, facings, or labels so sold and put upon the market by the said defendants, of the same general appearance, size, form, color, and ornamentation as the packages, cases, and coverings of your orators, and having the word "Tycoon" distinctly marked, printed, or stamped thereon in the same manner and style of those of your orators, and your orators annex the same hereto, marked "Schedule C."

(9.) And your orators further show unto your honors that the packages, cases, or coverings of the said defendants, when opened, are found to contain tea of a different kind and quality but of the same general appearance and descriptive properties as that of your orators; but your orators aver that the tea of the defendants is, in fact, a spurious article, the sale of which upon the market as and for the particular tea of your orators, by reason of the aforesaid imitation by the defendants of the label or trade-mark of your orators and the appropriation of the word "Tycoon," is a great injury to the reputation and sale of the genuine article in the hands of your orators and their customers.

(10.) And your orators further show unto your honors that the aforesaid acts of the defendants are in fraud of the rights of your orators, and by means thereof your orators have been deprived of great gains and profits of sale of their genuine tea and have been otherwise greatly damnified and injured, the precise amount of which damage your orators have not been able as yet fully to ascertain; but your orators verily believe and therefore state that the
8 same will far exceed the sum of $10,000; and, further, that

the said defendants are now using the aforesaid spurious imitations, facings, or labels with the word "Tycoon" stamped, printed, or marked thereon upon tea and threaten to continue so to do, to the great injury of your orators.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief herein prayed, and may (but without oath, an answer upon oath being hereby expressly waived) and according to the best and utmost of their knowledge a full, true, and perfect answer make to all and singular the premises, and that they may be decreed to account to your orators for all the profits which they may have made by the sale of their said fraudulent imitation of your orators' trade-mark as aforesaid, and all the profits which your orators would have made on the sale of their genuine tea but for the said infringing acts of the defendants, and also the damages suffered by your orators from such unlawful piracy by the defendants, and that the said defendants may be perpetually enjoined and restrained by the decree and injunction of this court, either individually or in connection with other persons or as agents for such other persons, from further use or imitation of your orators' trade-mark or their, the said defendants', packages, cases, coverings, facings, or labels of tea, and that your orators may have such other and further relief, and either or both, as equity shall require and to your honors shall seem meet—

May it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill until the further order of the court pending this suit, and also a writ of subpœna directed to the said Walter J. Gould, Edward Telfer, David D. 9 Cady, and L. F. Thompson, defendants herein, commanding them, on a certain day and under a certain penalty, to be and appear before your honors in this honorable court, and then and there to answer under this bill and to abide by and perform such decree as the court shall make in the premises.

And your orators will ever pray, etc.

(Signed) CALVIN R. CORBIN.
(Signed) HORATIO N. MAY.

SHUMAN & DEFREES,
Solicitors for Complainants.
P. L. SHUMAN,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, Cook County, } *ss:*

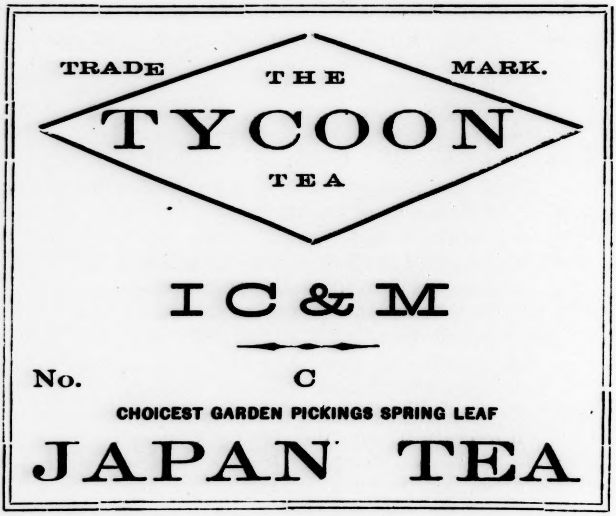
Calvin R. Corbin, being duly sworn, deposes and says that he has read the foregoing bill of complaint, signed by him and Horatio N. May, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes the same to be true; and he verily believes Ingraham, Corbin and May to have been the first to adopt and use the word "Tycoon" as and for a trade-mark, and that Corbin, May & Co., complainants in the foregoing bill of complaint, are the sole owners of said trade-mark word "Tycoon."

(Signed) CALVIN R. CORBIN.

Subscribed and sworn to before me this 21st day of September, 1885.

[SEAL.] (Signed) D. A. CAMPBELL,
Notary Public.

10 SCHEDULE "A."



TRADE MARK.

THE
TYCOON
TEA

IC & M

No. C

CHOICEST GARDEN PICKINGS SPRING LEAF

JAPAN TEA

SCHEDULE "B."

THE UNITED STATES OF AMERICA.

No. 9952.

To all to whom these presents shall come:

This is to certify that by the records of the United States Patent Office it appears that Ingraham, Corbin & May, of Chicago, Illinois, did, on the 21st day of November, 1881, deposit in said office for for registration fac-similes of a certain trade-mark for tea, and
11 the date of the receipt thereof was duly noted and recorded; that on the 21st day of November, 1881, they deposited therewith a statement and a written declaration, under the oath of Horatio N. May, a member of said firm, copies of all of which are hereto annexed; and the said firm having made the payment of a fee of twenty-five dollars and complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all other respects

complied with an act of Congress approved March 3, 1881, entitled "An act to authorize the registration of trade-marks and protect the same," the said fac-similes, statement, and declaration were duly recorded and the said trade-mark has been duly registered in the said Patent Office this 27th day of December, one thousand eight hundred and eighty-one, and protection therefor will remain in force for thirty years from said date unless sooner terminated, in accordance with section 5 of said act.

In testimony whereof the seal of the Department of the Interior is hereto affixed this twenty-seventh day of December, 1881, and of the Independence of the United States the one hundred and sixth.

Given under my hand at Washington, D. C.

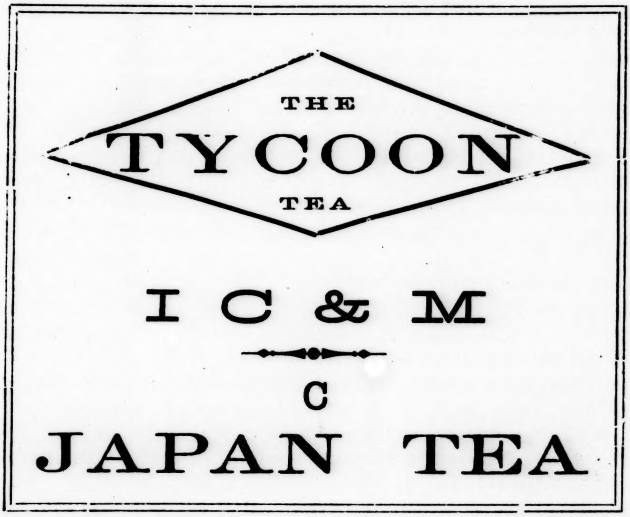
[SEAL.] V. D. STOCKBRIDGE,
Acting Commissioner of Patents.

12 TRADE-MARK.

INGRAHAM, CORBIN & MAY.

TEA.

No. 8,952. REGISTERED DEC. 27, 1881.



UNITED STATES PATENT OFFICE.

INGRAHAM, CORBIN & MAY, of Chicago, Illinois.

Trade-Mark for Tea.

Statement and declaration of trade-mark No. 8952, registered December 27, 1881; application filed November 21, 1881.

Statement.

To all whom it may concern:

Be it known that we, Ingraham, Corbin & May, copartners,
13 citizens of the United States, residing at Chicago, in the county
of Cook and State of Illinois, and doing business as importers of and wholesale dealers in groceries at Nos. 87 and 89 Michigan avenue, in said city, have adopted for our use a trade-mark for the Tycoon tea, of which the following is a full, clear, and exact specification:

Our trade-mark consists of the letters and words and arbitrary symbols "The Tycoon Tea, I. C. & M., C., Japan Tea," ornamental scroll border, transverse diamond shape. These have generally been arranged as shown in the accompanying fac-simile. The design is a square figure formed by a scroll border, within which and at the top is a transverse diamond shape in blue ink, containing within it the words "The" at the top and "Tea" at bottom, between which words and lengthwise of the diamond is the word "Tycoon" in ornamental letters, all of the words "The Tycoon Tea" being printed in blue ink; within the square, as described and beneath the diamond shape, the letters "I. C. & M." from left to right across the middle of the square; immediately beneath the letter or symbol "&," as described, the letter "C," and across the bottom of the square, as described, the words or letters "Japan Tea" within the border. The border and the letters or words "I. C. & M., C., Japan Tea" are printed in black ink upon a white ground; but the design may be printed in any different colors from those described in this statement, and the letters or words "I. C. & M., C., Japan Tea" may be omitted or they may be partly omitted and partly changed as to their position within the square without materially altering the character of our trade-mark, the essential features of which are the symbol of a diamond and the arbitrarily selected word "Tycoon."

14 This trade-mark we have used continuously in our business since June 1, 1879.

The class of merchandise to which this trade-mark is appropriated is a particular quality of uncolored pan-dried tea, of which we were the first and exclusive importers and wholesale dealers in the United States, and the particular description of goods comprised in such class on which we use the said trade-mark is the Tycoon tea.

It has been our practice to attach the said trade-mark to all packages containing the Tycoon tea by pasting the printed design above described upon the outside of the chest, caddy, or package.

The trade-mark is also used as a portion of the advertisement of our trade or business upon letter and bill heads and circulars, substantially as described.

INGRAHAM, CORBIN & MAY.

Declaration.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

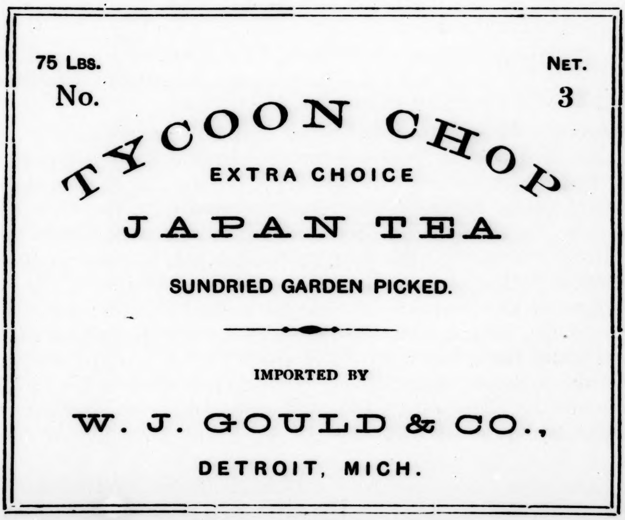
Horatio N. May, being duly sworn, deposes and says that he is a member of the firm of Ingraham, Corbin & May, the applicants named in the foregoing statement; that he verily believes that the foregoing statement is true; that they have at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with Japan and British North America; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that they are citizens of the United States. 15

HORATIO N. MAY.

Sworn and subscribed before me, a notary public in and for the county aforesaid, this 8th day of November, 1881.

[L. S.] P. L. SHUMAN,
Notary Public.

SCHEDULE "C."



75 LBS. NET.
No. 3
TYCOON CHOP
EXTRA CHOICE
JAPAN TEA
SUNDRIED GARDEN PICKED.
IMPORTED BY
W. J. GOULD & CO.,
DETROIT, MICH.

[NOTE.—Schedule "C" is of a different color from Schedule "A," in that the words "Tycoon Chop" are in gilt and the ground of the facing is red, slightly water-marked with gilt.]

16 *Security for costs.*

Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*
vs. } No. 2974.
WALTER J. GOULD *et al.*

I hereby acknowledge myself security for the payment of all costs for which the complainants may become liable in the above-entitled suit.

Dated Sept. 24th, 1885.

SHUMAN & DEFREES.
CHAS. B. HULL.

Endorsed: No. 2974. Circuit court of the United States for the eastern district of Michigan. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Security for costs. Filed in clerk's office Sept. 24th, 1885. Jno. Graves, dep'y clerk.

17 *Subpœna, with Proof of Service.*

Circuit Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, Sitting in Chancery

[SEAL. SUBPŒNA.]

The President of the United States of America to Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, of Detroit, Michigan, of the firm of W. J. Gould & Co., who are citizens of the State and residents of the eastern district of Michigan:

You are hereby commanded to be and appear in the circuit court of the United States of America for the sixth circuit and eastern district of Michigan, sitting in chancery, before the judges thereof, at the district court room, in the city of Detroit, on the first Monday of November next ensuing, then and there to answer unto a bill of complaint exhibited against you, as defendants, by Calvin R. Corbin and Horatio N. May, of Corbin, May & Co., of Chicago, Ills., & who are citizens of the State of Illinois, as complainants; and this you shall in nowise omit under the penalty of one thousand dollars.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

WALTER S. HARSHA, *Clerk*,
By JNO. GRAVES, *Dep'y Clerk.*

MEMORANDUM.—The above-named defendants are required to enter their appearance in this suit with the clerk of this court at his office, in the city of Detroit, on or before the day on which this writ of subpœna is returnable; otherwise the bill of complaint in this cause will be taken *pro confesso* against said defendants.

WALTER S. HARSHA, *Clerk.*
By JNO. GRAVES, *Dep'y Clerk.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 25th day of September, A. D. 1885, I served the within writ on Walter J. Gould, one of the defendants within named, at ——, in said district, by delivering to him personally a true copy thereof; also exhibiting this writ with the seal of the court impressed thereon, said copy having like memorandum appended thereto as is hereto appended.

S. S. MATHEWS, *U. S. Marshal,*
By C. P. TAYLOR, *Deputy.*

18 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 24th day of September, A. D. 1885, I served the within writ on David D. Cady & L. F. Thompson, two of the defendants within named, at Detroit, in said district, by delivering to each of them personally a true copy thereof; also exhibiting this writ, with the seal of the court impressed thereon, said copies having like memorandum appended thereto as is hereto appended.

S. S. MATHEWS,
U. S. Marshal,
By GEO. D. MUSSEY, *Deputy.*

I hereby certify that Edward Telfer could not be found in my bailiwick.

S. S. MATTHEWS,
U. S. Marshal.

Service	6 00
3 copies	1 50
2 miles' travel	12
Fees	$7 62

Endorsed: No. 2974. Circuit court of the United States for the sixth circuit and eastern district of Michigan. In chancery. Calvin R. Corbin & Horatio N. May *vs.* Walter J. Gould, Edward Telfer, David D. Cady, & L. F. Thompson. Subpœna. Filed Nov. 3, 1885. Walter S. Harsha, clerk.

19 *Affidavits, &c., on Motion for Preliminary Injunction.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, Calhoun County, } ss:

In the United States Circuit Court in and for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, etc., Complainants,

vs.

W. J. GOULD, EDWARD TELFER, DAVID D. CADY, L. F. THOMPSON, Copartners, etc., Defendants.

Allen Raymond, being first duly sworn, says on his oath that he is a resident of and carrying on a general retail grocery, tea, and provision business in the city of Battle Creek, county of Calhoun, in the State of Michigan; that he is acquainted with and knows the word "Tycoon" as applied to tea, and that the said word "Tycoon" has been for several years last past marked, stamped, or printed upon the facings, labels, chests, or coverings of a particular kind, quality, or brand of tea sold to the retail trade by Corbin, May & Co., of Chicago, Illinois; that said particular brand or quality of tea has become well known and very popular in the trade and among consumers of tea, and is known, bought, and sold as Tycoon tea; and affiant is informed and believes that Corbin, May & Co. are the only persons who sell the aforesaid particular brand or quality of tea to the retail trade in the United States; and affiant further states that on or about the first of August, 1885, he was shown a label or facing for tea by one W. J. McSkimon, an agent of W. J. Gould & Co., Detroit, Michigan, which said facing or label was marked, printed, or stamped with the word "Tycoon" in connection with the word "chop," and that said McSkimon, agent as aforesaid, informed this affiant that said W. J. Gould & Co. were then and there offering for sale to the trade and to consumers a kind or description of tea in chests or boxes with the aforesaid facing or label containing the word "Tycoon" affixed thereto; and affiant further says that he is informed and believes that said W. J. Gould & Co. have sold and delivered to Moulton & Stanley, dealers in teas at Battle Creek, Michigan, a large quantity—aggregating not less than 1,800 lbs.—of tea in packages or chests containing the word "Tycoon" marked, printed, or stamped thereon; and affiant further says that he has seen the labels or facing on said tea as aforesaid sold by W. J. Gould & Co., and that they are a colorable imitation of the facings or labels affixed to the packages or chests of tea so sold as aforesaid by said Corbin, May & Co.; and affiant further says that by reason of the close resemblance between the labels or facings of the said tea of the said defendants in the above-entitled cause and those of the said tea of the said complainants the casual observer and the public generally has been deceived into believing and purchasing the tea 20 of the defendants so marked as aforesaid to be and as and for the genuine Tycoon tea of Corbin, May & Co., and that great injury has already accrued to the business of Corbin, May & Co. on account of the sale by the defendants as aforesaid of their tea so marked as aforesaid with the word "Tycoon;" and affiant further says that he is informed and believes that the tea of the defendants so marked as aforesaid and so sold is a spurious article and inferior in quality to the tea of the complainants, and that it is sold by the defendants at such a low price as to greatly interfere with the sale of the genuine Tycoon tea of the complainants.

And further affiant saith not.

ALLEN RAYMOND.

Subscribed and sworn to before me this twenty-second day of September, 1885.

O. SCOTT CLARK,
Notary Public, Calhoun Co., Mich.

21 UNITED STATES OF AMERICA,
Eastern District of Michigan, Calhoun County, } *ss:*

In the United States Circuit Court in and for the Eastern District of Michigan. In Equity.

CALVIN P. CORBIN and HORATIO N. MAY, Copartners, etc., Complainants,
vs.
W. J. GOULD, EDWARD TELFER, DAVID D. CADY, and L. F. THOMPSON, Copartners, etc., Defendants.

George Shekell, being first duly sworn, says on his oath that he is a resident of the eastern district of Michigan aforesaid, doing business at the city of Battle Creek, in Calhoun Co., in said State of Michigan; that on or about the twenty-second day of September, 1885, at the city of Battle Creek aforesaid, affiant purchased from the firm of Moulton and Stanley, dealers in tea, groceries, and other provisions at Battle Creek, a package containing tea, upon which package or covering is marked, stamped, or printed a label in the words and figures following, to wit:

75 lbs. New crop Tycoon chop Net.
No. Extra choice Japan tea. 2
22 Sun-dried, garden-picked.
Imported by W. J. Gould & Co.,
Detroit, Michigan.

Which said package so marked, printed, or stamped with the words Tycoon chop is attached to the bill of complaint filed in said cause and is marked Schedule "C" therein.

And affiant further says that he knows and is acquainted with the trade-mark word "Tycoon" as used by Corbin, May & Co., of Chicago, Illinois, upon tea; that he has known said trade-mark Tycoon for several years last past, and that the tea of Corbin, May & Co. so marked or stamped on the packages or chests thereof with the said word Tycoon has become well known to the trade and in the market and among consumers of tea as a superior brand; and affiant further says that he has seen and knows the coverings, facings, or labels used by Corbin, May & Co., and that the aforesaid label or facing or covering upon the chest of tea purchased as aforesaid by this affiant is such a close and colorable imitation of the label, facing, or covering of the Tycoon tea of Corbin, May & Co. aforesaid as to deceive the casual observer and the public generally into believing that the aforesaid tea marked, stamped, or printed with the words Tycoon chop and the words imported by W. J. Gould & Co., Detroit, Michigan, is the genuine Tycoon tea of Corbin, May & Co.; and affiant further says that he is informed and believes that the tea so purchased by him from Moulton & Stanley has been put upon the market and sold by W. J. Gould & Co., the defendants in the above-entitled cause, with the intent to supersede the sale in the market and to consumers of the genuine tea of the said Corbin, May & Co.; and affiant further says that the tea of Corbin, May & Co. marked with the word "Tycoon" as aforesaid has for a long time been known in the trade and to consumers and to the public generally as the exclusive importation and sale of said Corbin, May & Co. and their agents and customers, and is identified wholly and solely in the market by the word "Tycoon," and is bought and sold and is generally known as the Tycoon tea; and affiant further says that the introduction into the market and the sale by the said defendants of the said so-called Tycoon chop Japan tea is an injury to the reputation and sale of the Tycoon tea of Corbin, May & Co.

And further affiant saith not.

GEO. W. SHEKELL.

Subscribed and sworn — before me this twenty-second day of September, 1885.

O. SCOTT CLARK,
Notary Public, Calhoun Co., Mich.

23 UNITED STATES OF AMERICA,
Eastern District of Michigan, Jackson County, } *ss:*

In the United States Circuit Court in and for the Eastern District of Michigan.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, etc., Complainants,

vs.

W. J. GOULD, EDWARD TELFER, DAVID D. CADY, & L. F. THOMPSON, Copartners, etc., Defendants.

William H. Hamilton, being first duly sworn, says on his oath that he is a resident of and carrying on business as a grocer in the city of Jackson, in the State of Michigan; that he has been engaged in said business for more than ten years; that he is acquainted with the firm of Corbin, May & Co., of Chicago, Illinois; that said firm are engaged and have been for several years last past engaged, in selling tea of their own manufacture under the trade mark or name "Tycoon;" that the tea so sold by them has gained a very great reputation, and has become very popular in the trade and among the consumers, and is now and has for a long time been identified solely by the word "Tycoon" as the particular tea of said Corbin, May & Co.

And affiant further says that the tea so sold by Corbin, May & Co. is packed in packages or chests having affixed thereto labels or facings marked, printed, or stamped with the word "Tycoon," together with such other words and figures as are deemed necessary to indicate the weight and grade of tea contained in said packages or chests.

And affiant further says that on or about the first day of August, 1885, one —— McSimon, an agent and traveling salesman for the firm of W. J. Gould & Co., Detroit, Michigan, called upon affiant at his store, in Jackson, and exhibited to affiant a label or facing for tea similar in many respects to the labels or facings used by Corbin, May & Co. upon tea as aforesaid, and this affiant then noticed particularly that said label or facing contained the word "Tycoon" printed in prominent letters, and, in connection with the word "chop," formed the most prominent feature of said label, and affiant informed said —— McSimon then and there that affiant believed the said label so shown him was an infringement of the trade-mark of Corbin, May & Co., and said —— McSimon informed this affiant that his house, meaning W. J. Gould & Co., did not care anything about that; that Corbin, May & Co. had no particular right to use the word "Tycoon," and they were going to run—meaning to sell—"the Tycoon" "chop" in competition with Corbin, May & Co.'s "Tycoon" tea.

And affiant further says, from his knowledge of the business, that there is such close resemblance between the distinctive features
of the defendants' labels or facings aforesaid to [and] the labels
24 or facings of complainants as to deceive the casual observer and
ordinary purchaser into buying the tea of the defendants so
marked as and for the tea of the complainants.

And affiant further says that the tea of the complainants is known to consumers and is purchased by them solely under the name "Tycoon" tea, and it will be an injury of an irreparable character to the trade of the complainants and to the business of the complainants' customers through the country to have the tea of the defendants introduced into the market under the name "Tycoon," as the word chop, as used by the defendants, is merely a synonym for tea.

And further affiant saith not.

W. H. HAMILTON.

Subscribed and sworn to before me this 23rd day of September, 1885.

THOMAS A. WILSON,
Notary Public in and for Jackson County, Mich.

25 UNITED STATES OF AMERICA,
Northern District of Illinois:

In the Circuit Court of the United States in and for the Eastern District of Michigan. In Equity.

CORBIN *et al.*
vs.
GOULD *et al.*

Calvin R. Corbin, being duly sworn, says on his oath that he is a citizen of the State of Illinois, resident at Chicago, in Cook county, in said State; that he is a member of the firm of Corbin, May and Company and one of the complainants in the bill of complaint filed herein against the above-named defendant and others; that the firm of Corbin, May and Company, of Chicago, are successors of the firm of Ingraham, Corbin and May; that said firm of Ingraham, Corbin and May was composed of this affiant, Granville S. Ingraham, and Horatio N. May; that said firm of Corbin, May and Company are engaged in business in Japan in purchasing tea in the natural leaf, partially dried, in large quantities, and collecting the same throughout the country and shipping it to the city of Yokohama, Japan, to their agents, who, under special orders issued from affiant's firm in Chicago, manufacture and prepare the tea leaves so purchased by processes adopted by affiant's firm for their sole and exclusive use into tea for the market in the United States; that said tea so manufactured and prepared is by said agents shipped to the United States and is imported into the United States for and by affiant's firm and is sold throughout the United States; that said tea so manufactured and prepared is of a particular quality and production, and is manufactured solely for the use of affiant's firm and for the trade and customers in the United States supplied by affiant's firm; that affiant, in the year 1879, discovered and adopted the word "Tycoon" as an appropriate trade name or mark to designate the particular manufacture and preparation of tea so by affiant's firm manufactured and prepared and sold as aforesaid; and affiant further states that the said firm of Ingraham, Corbin and May were the first to discover and adopt the said word "Tycoon" as a trade-mark for tea, and they have, from the date of such discovery and adoption hitherto and up to the present time, owned and used said trade-mark word "Tycoon" as applied to tea in the United States.

And affiant further states that on or about August 4th, 1885, he was informed by a letter received in the regular course of business from one W. H. Hamilton, of Jackson, Michigan, in words and figures following, to wit:

"DEAR SIR: Last evening W. J. Gould, of Detroit, their man, was here, and he was in high glee, saying that he could give me the Tycoon tea now. I asked him what he meant. He said they were going to run the Tycoon brand and he would show me the facing on one of the chests this morning; so he came in this a. m. and showed me the facing, and the brand was Tycoon tea. I did not

let him know that I cared for it, but it made me feel a little
26 nervous, for if they can run this brand there is some that
will do all they can against me here. He says that you have no more right to the copyright than they have. I only write this to put you on your guard, so you can check it before it goes into execution. You know what you can do, and you must protect me to the last. Trade is pretty good at present.

"Yours respectfully, W. H. HAMILTON."

A copy of which letter affiant attaches hereto and makes the same part of this his affidavit, Exhibit 1.

And thereupon, under date of August 7th, 1885, affiant instructed the attorneys of affiant's firm to write a letter to W. J. Gould and Company, the defendants herein, which said letter affiant caused to be mailed to said defendants, a copy of which is hereto attached and made part of this affidavit, Exhibit "2;" that thereafter affiant caused a letter to be written to W. J. Gould & Co., the defendants herein, under date of August 22, 1885, as follows:

"W. J. Gould & Co., Detroit, Mich.

"GENTLEMEN: We would call your attention to our letter of the 7th instant relative to the trade-mark for "Tycoon" tea owned by Mess. Corbin, May & Co., of this city, and which they have been informed you were using, unconscious, they supposed, of the fact that the trade-mark belonged to them, and would request that you kindly answer same, giving us the true state of things in this regard. Mess. Corbin, May & Co. do not wish to make any trouble, but feel bound to protect their interests and that of their customers. We shall be pleased to hear from you at an early date.

"We are very respectfully, SHUMAN & DEFREES."

That thereupon and on or about August 31, 1885, the said defendant, W. J. Gould, forwarded to Shuman & Defrees, then and there being attorneys for affiant's firm, a letter dated Detroit, Mich., August 31, 1885, a copy of which affiant attaches to and makes part of this affidavit, Exhibit "3," said letter being an acknowledgment of affiant's letters above referred to of the 22nd and 7th of August and in reference to the said trade-mark word "Tycoon;" that thereafter, on September 1, 1885, affiant caused the attorneys of his firm to send the following letter to said defendants:

"W. J. Gould & Co., 61 and 63 Jefferson Ave., Detroit, Mich.

GENTLEMEN: Your letter of the 31st ultimo, in the matter of the trade-mark "Tycoon," has been received and we forwarded it to Corbin, May & Co. Your statement seems to leave no room to question your good faith in the matter, and we have to say that we consider your explanation of the way you came to have the Tycoon tea as quite satisfactory.

"We are very respectfully, SHUMAN & DEFREES."

27 That thereafter, on the 1st day of September, 1885, affiant
received a postal-card communication from Battle Creek, Michigan, in words and figures as follows:

"Moulton & Stanley to-day received 25 half chests Tycoon chop tea from W. J. Gould & Co., Detroit. If you propose standing behind the tea now is the time to do it, before the great Tycoons are superseded by Tycoon chop.

"Respectfully, ALLEN RAYMOND."

That thereafter, on the said first day of September, 1885, affiant received a copy of the Detroit Commercial of August 8, 1885; also a copy of the Detroit Commercial of August 22, 1885; also a copy of the Detroit Commercial of August 29, 1885, said Commercial being, as affiant is informed and believes, the representative trade journal of Michigan, printed and published in the city of Detroit, Michigan, in each of which copies of said trade journal was printed and published an advertisement of the said defendants setting forth that they had imported and offered for sale 400 chests Tycoon chop, which copies of said Detroit Commercial affiant attaches to this his affidavit, making the same a part thereof, Ex. "4;" that thereafter, on the 2nd day of September, 1885, affiant caused the attorneys of Corbin, May & Co. aforesaid to mail to said defendants a letter, a copy of which is hereto attached and made part of this affiant's affidavit, calling the attention of the defendants to said advertisements and other information relative to the defendants' offering the so-called Tycoon tea for sale, in contradiction of the letter of said W. J. Gould of August 31, 1885, an exhibit of which is hereto attached; that thereafter, on September 18, 1885, affiant received from Allen Raymond a letter dated September 17, 1885, in reference to said trade-mark "Tycoon," a copy of which is hereto attached and made a part of affiant's affidavit, Ex. "6." Affiant also attaches and makes part of his affidavit a copy of the postal card of Allen Raymond, dated August 31, 1885, Ex. "7;" that thereafter and on or about September 18, 1885, affiant received a copy of the Sunday Morning Call, a newspaper printed and published at Battle Creek, Michigan, Sunday morning, September 13, 1885, which newspaper contains the following advertisement:

"Tycoon chop tea cannot be beaten in Battle Creek, and 'don't you forget it.' It is sold at Moulton & Stanley's."

Affiant attaches hereto a copy of said paper and makes the same a part of his affidavit herein, Ex. "8;" and affiant says that he is informed and verily believes that said Moulton and Stanley mentioned in said advertisement are the same Moulton and Stanley referred to in the postal-card communication aforesaid of Allen Raymond, and that said defendants have sold and delivered to said Moulton & Stanley, in violation of affiant's trade-mark rights, certain tea marked, printed, or stamped with the word "Tycoon" thereon, with intent to deceive the public and the casual observer into believing that the said tea so sold as aforesaid is the genuine tea of affiant's firm; and affiant further says that as soon as possible after learning of the intention of the said defendants to
28 sell tea marked or printed with the word "Tycoon" affiant notified said defendants, and also said Moulton & Stanley, of

the trade-mark rights of said Corbin, May & Co. herein, and warned said defendants not to infringe said rights, and requested them to so inform their customers.

Affiant further says that said defendants have paid no attention whatever, as he is informed and believes, to said warning and request, but have ever since violated and continue to violate the trade-mark rights of Corbin, May & Co., as herein set forth.

And further affiant saith not.

CALVIN R. CORBIN.

Subscribed and sworn to before me this 21st day of September, 1885.

[SEAL.] D. A. CAMPBELL,
Notary Public.

29 EXHIBIT I.

JACKSON, MICH., *August 4th*, 1885.

DEAR SIRS: Last evening W. J. Gould, of Detroit, their man, was here, and he was in high glee, saying that he could give me the Tycoon tea now. I asked him what he meant. He said that they were going to run the Tycoon brand and he would show me the facings on the chests this morning; so he came in this a. m. and showed me the facings, and the brand was Tycoon tea. I did not let him know that I cared, but it made me feel a little nervous, for if they can run this brand there is some that will do all they can against me here. He says that you have no more right to the copyright than they have. I only write this to put you on your guard, so you can check it before it goes into execution. You know what you can do, and you must protect me to the last. Trade is pretty good at present.

Yours truly, W. H. HAMILTON.

30 Ex. 2.

Shuman & Defrees, Borden block, corner of Randolph and Dearborn streets.

CHICAGO, *August* 7, 1885.

W. J. Gould & Co., Detroit, Mich.

GENTLEMEN: Permit us to call your attention to the trade-mark for Tycoon tea, which Mess. Ingraham, Corbin & May, now Corbin, May & Co., of 89 Michigan avenue, Chicago, had registered in accordance with the statutes of the United States some two or three years ago. It has been reported to us by persons doing business with your house that you are using in your trade a mark for "the Tycoon chop" which is similar in design to Corbin, May & Co.'s trade-mark, and which you use on chests of tea. If this information is correct, it is proper for us to say to you, as the attorneys of Corbin, May and Co., we that presume you are not aware of the fact that they are the sole owners of the trade-mark for Tycoon tea in the United States, and to request you to not employ said trade-mark in your business except upon teas of Corbin, May & Co. properly branded by them.

We assume that the intimation from us of a possible injury to Corbin, May and Co.'s business by the use of an infringement of their trade-mark will be sufficient to cause a discontinuance of such use on your part, and we shall be pleased to learn either that you have never employed the trade-mark mentioned or have ceased to use it.

Awaiting a reply, we are, very respectfully,

—— ——.

31 Ex. "3."

DETROIT, MICH., *Aug*. 31, 1885.

Mess. Shuman & Defrees.

GENTLEMEN: Yours of 22nd and 7th inst. were duly received, but owing to the absence of the writer were not answered. I have just returned from a trip East. I buy all teas bought by this firm; bought one hundred chests branded Tycoon chop. At the time they were ordered had never heard that Mess. Corbin & May claimed to own the brand or name. The first that I knew of it was from a Mr. Frank Davis, salesman for Mess. Fitch & Howland, of your city. I was showing him the facing and he remarked that he thought Mess. Ingraham, Corbin & May had a copyright of that brand. I then went East and on my return found your letters. Now, I do not think if there had been any intention of stealing I., C. & M.'s thunder that one hundred chests would have been the limit to do it with, for certainly they themselves would laugh at such an attempt with so small a gun. It is not at all likely that we may again hit on the chop when buying, but there was no attempt at any imitation that I know of, and I can and will, if they so desire it, go before any magistrate and make affidavit that I have never seen one of the facings on their tea. As to Tycoon tea, they are not the originators of that brand, for Gould & Fellers sold a Japan tea in 1867–'8, Glenisla cargo, branded Tycoon tea; of course, at that time, it was not sun-dried but a regular tea. Now, we have no desire to have any trouble with Mess. Corbin, May & Co., and certainly do not wish to steal any one's trade-mark or imitate labels used by other firms, and regret that this has occurred, for had it been known by this firm that it would in any way injure or annoy firms in the same line of business we never should have bought the tea, and in future there will be no complaint on that brand, for we think that the facings on teas or labels on goods that are used by one firm should be respected by others, whether they are copyrighted or not, and we think something of our reputation among the importers of your city.

Respectfully, &c., W. J. GOULD.

32 **EXHIBIT 4.**

The Detroit Commercial,

The representative trade journal of Michigan.

Vol. 2, No. 101. Detroit, Mich., August 8, 1885. One dollar a year; single copies, 5 cents.

W. J. Gould & Co.

Pan-fired.
573 chests
per Harmonia.
250 chests
per Oceanic.
533 chests
per Glenaron.

Cut
of
W. J. Gould & Co.'s
store.

Sun-dried.
400 chests
Tycoon chop,
per Harmonia.
125 chests
per Oceanic.
175 chests
per Glenaron.

New Japan teas, our own importation, by rail; also by Suez canal. Send for sample prices before buying—61 & 63 Jefferson Ave., Detroit.

Same newspaper, of date August 22, 1885, on the first page.

Big tea shipment.

The shipment of teas made by N. J. Gould & Co. on Wednesday amounted to 631 chests, and they have orders yet to fill. This is claimed to be the largest shipment of teas ever made from Detroit in one day.

Same newspaper, of date August 29, 1885.

Precisely the same advertisement, in the same words and arrangement, as is given above under date of August 8, 1885.

33 **Ex. "5."**

Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

CHICAGO, *Sept.* 2, 1885.

W. J. Gould & Co., 61 & 63 Jefferson Ave., Detroit, Mich.

GENTLEMEN: Having referred your letter of August 31st to Corbin, May & Co. for their consideration, they now advise us of certain facts in regard to the Tycoon tea, which are inconsistent with the terms of your communication. It appears that about August 4th one of your salesmen called upon one of the customers of Corbin, May & Co., up in the country, and informed him that your house was ready to supply him with the Tycoon tea, and that your house was going to run that brand; also that you didn't consider that Corbin, May & Co. had any special right to the brand Tycoon. In addition to this they have during the past ten days received from various parties statements that your salesmen are offering "Tycoon" tea freely to them. We also observe that the Detroit Commercial of the 8th and 22nd of August contains a full-page advertisement of your firm, in which you announce that you have four hundred chests of the "Tycoon chop" per Harmonia, and one of those two papers contains a puff paragraph of your firm, to the effect that you have shipped 631 chests and have other large orders to fill.

The best that can be said of this lay-out of facts is that it looks very bad when compared with the statements in your letter of the 31st. You therein assert that you have never had but one hundred chests of the brand complained of, and at that very time you were spreading the news among Corbin, May & Co.'s customers that you had 400 chests by one vessel.

You further state you were ignorant of the fact that Corbin, May & Co. were selling "Tycoon" teas. They have been engaged in the business of importing and selling this particular brand of tea for several years, and it is fair to assume that there is not a reputable firm of grocers and dealers in tea or a salesman worthy of the name in the business between New York and San Francisco that has not been advised that the Tycoon tea is imported and sold by Ingraham, Corbin & May or Corbin, May & Co.

You say in closing your letter that you would not knowingly be guilty of cheating your neighbor or stealing the benefit of his trade-mark, and that you wish to stand well with the importers of Chicago.

Let us say that, being thoroughly disinterested parties, we were very much pleased with the way in which you expressed yourselves upon that point of commercial honor and fair dealing, and we were greatly surprised to learn of the existence of the facts above alluded to.

Now, as honest merchants, we have this request to make of you,
viz: That you change the facings of whatever chests or half
34 chests or other packages of tea bearing the name Tycoon
upon them you may have in your possession, and stop the offer or sale of any such goods by your salesmen, at the same time informing the trade in general, and the customers of Corbin, May & Co. in particular, that you do not sell and will not sell or offer for sale the piratical brand of tea called Tycoon chop. You cannot go too far in your efforts to repair the damage which you have inflicted upon Corbin, May & Co. in this pirating their trade-mark.

We are instructed by our clients to watch this case zealously in the interest of their trade, and we now beg to inform you that if we have any well-grounded reason for believing that you continue to offer for sale any tea under the infringing trade-mark we shall apply to the United States court for such relief as is proper in such cases, and endeavor to compel you to account to Corbin, May & Co. for the damage you have already done them. Their customers demand, in almost every mail, that they be protected from the threatened invasion of the market by your so-called Tycoon chop.

Awaiting your reply, we are, very respectfully,

—— ——.

35 Ex. 6.

BATTLE CREEK, MICH., *Sept.* 17, 1885.

Corbin, May & Co., Chicago, Ills.

GENTLEMEN: Yours of 16th received *re* "Tycoon chop" tea. I wrote you some time since that they had 25 hf. chests Tycoon chop, and of course supposed you would know they bought them to sell against your Tycoons and not for an ornament, and when I wrote you they had the tea in stock you took no chances on my word, for I saw the goods before I wrote you, and now they have the goods exposed in both windows and are talking Tycoon chop 3 lbs. for $1.00, and of course it interferes with L. & J. and my own trade on the teas. I have been surprised that there has been nothing done before this, as I supposed if there was any virtue in a copyright C., M. & Co. would, without any delay, assert their right.

Awaiting your action in regard to above, I am, yours, &c.,

ALLEN RAYMOND.

You will see their ad. in the "Sunday Evening Call" mailed you Monday.

Ex. "7."

Postal card.

BATTLE CREEK, MICH., *Aug.* 31, 1885.

Moulton & Stanley to-day received 25 hf. ch. Tycoon chop tea from W. J. Gould & Co., Detroit. If you propose standing behind the tea, now is the time to do it, before the great "Tycoons" are superseded by "Tycoon chop."

Respectfully, ALLEN RAYMOND.

36 EXHIBIT 8.

The Sunday Morning Call.

Second Year, No. 59. Battle Creek, Mich., Sunday Morning, September 13, 1885. Price, 5 cents.

Advertisement.

Tycoon chop tea cannot be beaten in Battle Creek, and "don't you forget it."

It is sold at Moulton & Stanley's.

Endorsed: 2974. Circuit court of the United States, eastern dist. Mich. Corbin *vs.* Gould. Affidavits for motion for injunction. Filed Sept. 24, 1885. Walter S. Harsha, clerk.

37 *Motion for Injunction.*

THE UNITED STATES OF AMERICA, *Eastern District of Michigan,* } *ss:*

In the United States Circuit Court, Eastern District of Michigan. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, &c., Complainants,

vs.

WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and L. F. THOMPSON, Copartners, &c., Defendants.

Now come the plaintiffs in the above-entitled cause, by Shuman & Defrees, their solicitors, and move the court here to grant a restraining order or preliminary injunction in accordance with the prayer of the bill of complaint filed herein.

This motion is based upon the bill and affidavits heretofore filed in said cause.

SHUMAN & DEFREES,
Complainants' Solicitors.

Endorsed: 2974. United States circuit court, eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Motion for injunction. Filed Sept. 24th, 1885. Jno. Graves, dep'y clerk.

38 *Proof of Service of Notice of Motion for Injunction.*

THE UNITED STATES OF AMERICA, *Eastern District of Michigan,* } *ss:*

In the United States Circuit Court in and for the Eastern District of Mich. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, &c., Complainants,

vs.

WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and L. F. THOMPSON, Copartners, &c., Defendants.

To Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, defendants:

You are each and all of you hereby notified that the above-named complainants will on Tuesday next, at 9 o'clock a. m., or as soon thereafter as counsel can be heard, apply, in the above-entitled cause, to Hon. H. B. Brown, judge, at the room usually occupied by him as a court-room in the United States court-house, in the city of Detroit, for a writ of injunction to restrain the infringement of complainants' registered trade-mark "Tycoon" upon tea, when and where you may be present, if you see fit. This notice is accompanied by copies of the bill and affidavits, which will be presented to the court at the time above mentioned and for support of the motion.

Very respectfully, SHUMAN & DEFREES,
Solicitors for the Complainants.

Detroit, Sept. 24, 1885.

Notices, &c., in the above cause may be filed with the clerk of the court, addressed to complainants' solicitors, and further service will not be required.

SHUMAN & DEFREES,
Attorneys-at-Law, 12 & 13 *Borden Block, Chicago, Ill.*
Sept. 24, 1885.

Service of the within notice is hereby accepted.

W. J. GOULD & CO.
L. F. THOMPSON.

UNITED STATES OF AMERICA,
Eastern District of Michigan, } *ss:*

—— ——, being duly —, says on his oath that he served the within-named defendants with a copy of the within notice by — this 24th day of September, 1885.

—— ——.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Proof of service of notice of motion. Filed September 29, 1885. Walter S. Harsha, clerk.

39 *Order for Preliminary Injunction.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Tuesday, the twenty-ninth day of September, in the year one thousand eight hundred and eighty-five.

Present: The Honorable John Baxter, circuit judge, and the Honorable Henry B. Brown, district judge.

CALVIN R. CORBIN and HORATIO N. MAY
vs.
WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and LOUIS F. THOMPSON. } In Equity.

In this cause, due notice of motion for injunction having been served on said defendants, as appears by proofs on file, after hearing Mr. Percy L. Shuman, of counsel for the complainants, it is by the court now here ordered that an injunction do forthwith issue as prayed for.

Judge Baxter did not sit in this case.

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40 *Injunction, with Return of Service.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

The President of the United States of America to Walter J. Gould, Edward Telfer, David D. Cady, and Louis F. Thompson, copartners, &c., and to your counselors, attorneys, solicitors, trustees, agents, and servants and each and every of them, Greeting:

Whereas it has been represented to us in the circuit court of the United States for the eastern district of Michigan, in equity, on the part of Calvin R. Corbin and Horatio N. May, copartners, doing business under the name and style of Corbin, May & Co., plaintiffs, that they have lately exhibited their bill of complaint against you, the said Walter J. Gould, Edward Telfer, David D. Cady, and Louis F. Thompson, defendants, to be relieved touching the matters therein complained of, in which bill it is stated, among other things, that you are combining and confederating with others to injure the said plaintiffs touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience, we therefore, in consideration thereof and of the particular matters in the said bill set forth, do strictly command you, the said Walter J. Gould, Edward Telfer, David D. Cady, and Louis F. Thompson and the persons before mentioned and each and every of you, under the penalty of ten thousand dollars, to be levied of your lands, goods, and chattels, to our use, that you do absolutely desist and refrain from further use or imitation of a certain trade-mark word, "Tycoon," or any reproduction or colorable imitation thereof upon packages, cases, coverings, facings, or labels of tea until the further order of this court.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth.

[SEAL.]

WALTER S. HARSHA, *Clerk.*

41 UNITED STATES OF AMERICA,
Eastern District of Michigan, } *ss:*

I do hereby certify and return that on the 29th day of September, A. D. 1885, in the county of Wayne and district aforesaid, I served the within writ upon David D. Cady, one of the firm of W. J. Gould & Co., by delivering to him personally a true copy thereof and exhibiting to him this original under the seal of the court.

Fees, $2.56.

S. A. MATTHEWS, *Marshal,*
By GEO. D. MUSSEY, *Deputy.*

Endorsed: No. 2974. Circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Injunction. Filed in clerk's office Sept. 29th, 1885. Walter S. Harsha, clerk.

42. *Præcipe for Entry of Appearance of Defendants.*

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al. vs.* WALTER J. GOULD *et al.*, Def'ts.

SIR: Please enter the appearance of the defendants in the above-entitled cause, with the usual order that complainants deliver copy of the bill filed in this cause to us within 20 days after service upon him [them] of notice of our appearance.

DICKINSON, THURBER & HOSMER.
Sol's for Def'ts.

To W. S. Harsha, Esq., register of said court.
Detroit, Oct. 31, 1885.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Præcipe for appearance. Filed Oct. 31, 1885. Walter S. Harsha, clerk.

43 *Entry of Appearance of Defendants.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

OCT. 31, 1885.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.
} No. 2974.

On filing a præcipe signed by Dickinson, Thurber & Hosmer it is ordered that the appearance of the defendants in this cause, be and the same is hereby, entered herein; and it is further ordered that the complainants herein or their solicitors be, and they are hereby, required to deliver to the defendants in this cause or to their said solicitors a copy of the bill of complaint on file herein within 20 days after service upon them of due notice of the entry of this order, &c.

WALTER S. HARSHA, *Clerk*,
By JNO. GRAVES, *Dep'y.*

44 *Answer.* (*Filed December* 5, 1885.)

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

The answer of Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, defendants, to the bill of complaint of Calvin R. Corbin and Horatio N. May, complainants.

These defendants, saving and reserving unto themselves all manner of advantage and benefit of exception to the many insufficiencies in said complainants' bill of complaint contained, for answer thereunto, or to so much thereof as they are advised is necessary and material for them to answer, answering, say:

1. They deny that said complainants are the owners of a trade-mark of the word "Tycoon," and deny that said alleged trade-mark is used in commerce with foreign nations in the sense in which such phrase is used in the act of Congress relating to trade-marks, as alleged in the first paragraph of complainants' said bill of complaint, and deny that complainants' tea is at present generally known and sold as a standard article in the market in the chief and important cities and towns in the United States, and particularly in the chief and important cities and towns in the State of Michigan, as alleged in said first paragraph of complainants' said bill; and as to the other matters and things alleged in said first paragraph of complainants' said bill they aver that they have neither any knowledge
45 thereof nor information other than conveyed by the bill of
complaint or sufficient to found a belief, and, therefore, neither admitting nor denying the same, leave complainants to make such proof thereof as they may be advised is material and necessary.

2. These defendants, further answering, aver that they have no knowledge as to the matters and things alleged in the second and third paragraphs of complainants' said bill of complaint, nor have they any information in regard thereto, except as conveyed by said bill of complaint, nor any information sufficient to found a belief, and, neither admitting nor denying the same, they leave complainants to make such proof thereof as they may deem proper.

3. These defendants, further answering, deny that the word "Tycoon" can be lawfully adopted as a trade-mark, but aver that it is a word in common use in trade and not subject to be adopted as a trade-mark, either at common law or under the provisions of the acts of Congress relating to trade-marks or the statutes of any of the United States; and they further deny that in the year 1879, as alleged in the fourth paragraph of complainants' said bill of complaint, complainants could or did lawfully and of right adopt such word as a trade-mark, but aver, on the contrary, that such word was in common use prior to the alleged adoption of said complainants, and that it had, at various times prior to said alleged adoption of complainants and by various persons, been used as a

brand or name to various kinds of tea by them, respectively, sold, and that complainants were not then nor are they now entitled to any exclusive property therein; and as to the other matters and things in the fourth and fifth paragraphs of complainants' said bill of complaint contained, and not hereinbefore answered unto, confessed or avoided, traversed or denied, said defendants aver 46 they have no knowledge or information sufficient to found a belief, and, therefore, neither admitting nor denying the same, leave complainants to make such proof thereof as they may be advised is material.

4. These defendants, further answering, deny as aforesaid and for the reasons aforesaid that complainants have any lawful right to the exclusive use of the word "Tycoon," and deny that they are the owners of a trade-mark used in commerce with foreign nations in the contemplation of the act of Congress in such case made and provided, as alleged in the sixth paragraph of complainants' said bill; but they aver they have no knowledge or information, except as given in said bill of complaint, of the alleged proceedings in the Patent Office, and of the alleged registration of the word "Tycoon" as a trade-mark, and the issuance of a certificate, as alleged in the sixth paragraph of said bill, or any other matter and thing therein set forth and not hereinbefore answered or denied, and, neither admitting nor denying the same, they leave complainants to such proof thereof as they may see fit to make, and aver that the declaration therein alleged to have been made on the oath of said complainant May, though it may have been made in good faith, was not true in point of fact, and aver that if the certificate was granted as therein set forth such certificate is void and of no effect, not only because of the prior use of the said word "Tycoon" as applied to teas, but also as aforesaid, because said word, by reason of its common use, cannot be made the subject of a trade-mark.

5. And these defendants, further answering, deny that they have confederated with any other persons and have made and sold and put upon the market, in the city of Detroit and elsewhere, 47 large or any quantities of teas in packages or cases in size, shape, outer color, and appearance like those of said complainants, and deny that they have stamped or printed or marked the word "Tycoon"' in imitation of said complainants' alleged trade-mark, on any packages or cases or coverings, and deny that they have made any imitation or copy of said alleged trade-mark, or sold any packages which were in any way calculated or intended to deceive and mislead the public and the casual observer into the belief that they were of the manufacture or sale of said complainants, as alleged in the seventh paragraph of complainants' said bill, and they aver that they never heard that complainants claimed to use the word "Tycoon" as a trade-mark until on or about the 8th day of August, 1885, when they received a letter from the solicitors of said complainants in this cause.

6. These defendants, further answering, admit, as alleged in the eighth paragraph of complainants' said bill, that they have used facings, coverings, or labels upon packages of their tea, as more par-

ticularly hereinafter set forth, a duplicate of which is attached to complainants' said bill and marked "Schedule C;" and they admit that the word "Tycoon," in connection with the word "chop," is distinctly marked, printed, or stamped thereon, but deny that it is in the same manner and style of said complainants, and deny that the said facing or label has any similarity to the label of said complainants greater than one tea facing or tea label bears to another, and aver that, except in the word "Tycoon," there is no resemblance whatsoever between them. They admit that the package in which said tea is packed has an outward covering similar to that of said
complainants, but they aver that the said packages come from
48 Japan covered in this manner, and that there is no more
similarity in respect to the size and outward covering than there is between any packages of tea containing the same amount sold by any of the merchants of the United States.

7. And these defendants, further answering, deny that the tea of these defendants is a spurious article, and deny that the sale of the same upon the market is in any respect an injury to the reputation and sale of the teas of said complaintant, but aver, on the contrary, that the teas of these defendants is a genuine sun-dried Japan tea leaf and, the defendants aver, of a superior quality to the average of the "Tycoon" teas sold by said complainants. They further aver that, as appears by the advertisements of said complainants as taken from the Chicago Commercial Bulletin, the said complainants advertise at least twenty grades of so-called "Tycoon" teas, varying in price from forty-two cents a pound down to seventeen cents; and these defendants aver that the tea of said complainants is not of one kind and quality, as averred in the ninth paragraph of complainants' said bill.

8. These defendants, further answering, aver that on or about the 3rd of March of the present year they gave an order for an invoice of 350 chests of tea and twenty-three chests of tea dust to the firm of Charles P. Low & Co., of Japan, of which they directed that 100 chests should be marked by a facing or label of which Schedule C, attached to complainants' said bill, is a duplicate, and that thereafter these defendants received into their possession the said 100 chests of tea so marked as aforesaid and which constitute all the teas which these defendants have ever had or offered for sale marked
with the word "Tycoon," except as hereinafter stated.

49 9. And these defendants, further answering, aver that of
the said 100 chests of "Tycoon" tea they had sold a considerable portion, but at the commencement of this suit, to relieve their customers of any annoyance to which they might be subjected from the sale of teas bearing the word "Tycoon," and upon which said complainants claimed a trade-mark, they promptly took from their customers such packages as remained unopened, and of such 100 chests of tea they now have in their possession eighty-one. They further aver that while they have advertised a greater number of chests for sale, it is a custom of merchants generally to similarly exaggerate in their advertisements, and that, in point of fact, as aforesaid, they have never had in possession or offered for sale any but

the said 100 chests so marked as aforesaid. They further aver that until the receipt of the said letter from complainants' solicitors, on or about the 8th day of August last past, they never had heard that complainants claimed the word "Tycoon" as a trade-mark, and they never had heard that complainants sold any teas under that name or designation; but they aver that the word "Tycoon" has been used as applied to teas in a similar manner both in Detroit, New York, San Francisco, and elsewhere throughout the United States for twenty years or thereabouts; and these defendants, further answering—the defendant Gould of his own knowledge and the other defendants on information and belief—aver that prior to the year 1870 the said defendant Gould, in conjunction with one Fellows, while doing a grocery business, under the firm name of Gould & Fellows, at Detroit, Wayne county, Michigan, sold teas under the name, style, and designation of "Tycoon" tea, and that said tea was sold in the New York market and elsewhere in the United States.

50 They further aver that they have caused the records of the custom-house at San Francisco to be examined, and that on the 15th of May, 1873, by the American steamer Japan were imported five cases of "Tycoon" tea by Messrs. Philips, Taber & Co., of San Francisco; that on the 8th of August, 1874, by the American steamer Colorado, Messrs. Philips, Taber & Co. imported 100 packages of "Tycoon" tea; that on the 22d of January, 1875, Messrs. Philips, Taber & Co., of San Francisco, imported 110 packages marked "Tycoon tea," and that on the 26th day of June, 1876, Messrs. Taber, Harker & Co., by the British steamer Oceanic, imported fifty boxes of new crop "Tycoon" tea; and defendants aver, upon information and belief, that the word "Tycoon" has been commonly applied on the Pacific coast as to teas for upwards of twenty years last past.

10. They further show unto the court that they are advised and believe, and therefore charge the truth to be, that the teas of said complainants are prepared, or "fired," as it is known to the trade, by the firm of Smith, Baker & Co., and these defendants have purchased of H. Levi & Co., importers, of San Francisco, a box of five pounds of Japan tea, prepared, or "fired," by said firm of Smith, Baker & Co., bearing the word "Tycoon," and with a facing which more nearly resembles complainants' than these defendants', and that they have purchased of the firm of Coghill & Simon, of San Francisco, a certain box containing ten pounds of tea, bearing the word "Tycoon" on its facing, and more nearly resembling the facing of said complainants than these defendants', which said boxes or packages of tea these defendants are ready to produce and prove, as may be directed by this honorable court; and these defend-
51 ants attach hereto the certificates of the deputy collector of
the port of San Francisco showing the importation of the tea marked "Tycoon" as aforesaid prior to the alleged claim of said complainants, which said certificates are marked Exhibits "A" and "B," respectively.

11. And these defendants, further answering, deny each and every allegation in said complainants' bill of complaint contained and not

hereinbefore fully answered unto, confessed or avoided, traversed or denied, and all manner of combination and confederacy therein charged and set forth, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

WALTER J. GOULD,
EDWARD TELFER,
By W. J. GOULD,
Attorney-in-Fact.
DAVID D. CADY,
LEWIS F. THOMPSON.

DICKINSON, THURBER & HOSMER,
Sol's for Def'ts and of Counsel.

EASTERN DISTRICT OF MICHIGAN,
State of Michigan, County of Wayne, } *ss:*

On this 4th day of December, A. D. 1885, before me personally appeared the above-named Walter J. Gould and made oath that he had heard read the foregoing bill of complaint by him subscribed and knows the contents thereof; that the statements therein contained are true, of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those he believes it to be true.

HENRY S. MAHON,
Notary Public, Wayne County, Michigan.

52 EXHIBIT "A."

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *November 6th,* 1885.

This is to certify that the records of this office show that the following-described merchandise was imported from Yokohama, Japan, into the port of San Francisco, Cal., by Messrs. Philips, Taber & Co., as appears by the original consular invoices now on file in this office:

Date of entry of vessel.	Name of vessel.	Merchandise.
May 15, 1873	Am. stm. Japan	5 cases Tycoon tea.
August 8, 1874	" " Colorado	100 packages Tycoon tea.
Jan. 22, 1875	" " Colorado	110 packages Tycoon tea.

[SEAL COLLECTOR OF CUSTOMS.]

M. WEBBER,
Deputy Collector.

EXHIBIT "B."

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *November* 6, 1885.

This is to certify that the records of this office show that the following-described merchandise was imported from Yokohama, Japan, into the port of San Francisco, Cal., by Messrs. Taber, Harker & Co., as appears by the original consular invoices on file in this office:

Date of entry of vessel.	Name of vessel.	Merchandise.
June 26, 1876	Br. stm. Oceanic..	50 boxes new crop Tycoon tea.

[SEAL COLLECTOR OF CUSTOMS.]

M. WEBBER,
Deputy Collector.

53 *Replication to Answer* (*Filed December* 19, 1885.)

UNITED STATES OF AMERICA, }
Eastern District of Mich., } *ss:*

In the Circuit Court of the United States, Eastern District of Michigan. November Term, A. D. 1885.

CORBIN *et al.* }
vs. } In Equity.
GOULD *et al.* }

The replication of Calvin R. Corbin and Horatio N. May, complainants, to the answer of Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

PERCY L. SHUMAN,
Solicitor for Complainants.

54 *Stipulation Extending Time to Take Proofs, &c.*

Law offices Percy L. Shuman, Borden block, cor. Randolph and Dearborn streets.

CHICAGO, *Jan'y* 25, 1886.

Dickinson, Thurber & Hosmer, 149 Jefferson avenue, Detroit, Mich.

GENTLEMEN: *In re* Corbin *vs.* Gould, No. 2974, and as suggested in your letter of the 16th instant, I have to append the stipulation amended, and have amended the copy you sent me accordingly, which please confirm.

"It is further stipulated that the time for taking proofs may be extended for sixty days from the date of this order; that the proofs taken under this stipulation may be used on the trial of the case at law now pending in said court between said parties should the same be tried after the trial of the case in equity, and that notice of two weeks of the taking of testimony in California shall be deemed reasonable notice."

P. L. SHUMAN,
Solicitor for Complainants.

P. S.—Stipulations are dated January 25, 1886.

Dickinson, Thurber & Hosmer, sol'rs for def'ts.

55 In the United States Circuit Court, Eastern District of Michigan.

UNITED STATES OF AMERICA,
Eastern District of Michigan, } *ss:*

CALVIN R. CORBIN and HORATIO N. MAY,
Copartners,
vs.
WALTER J. GOULD *et al.*, Copartners, &c. } No. 2974. In Equity.

It is hereby stipulated and agreed that the testimony in the above-entitled cause shall be taken in writing, orally, by questions and answers, and may be taken before any notary public, United States commissioner, or other competent officer authorized to administer oaths, at the place where such testimony is to be taken, before an examiner appointed therein, and otherwise as provided in the sixty-seventh rule, in equity, as amended.

P. L. SHUMAN, *Solicitor for Complainants.*
DICKINSON, THURBER & HOSMER,
Solicitors for Defendants.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Stipulation. Filed January 27th, 1886. Jno. Graves, dep. clerk.

56 *Order Extending Time to Take Proofs.*

In the Circuit Court of the United States for the Eastern District of Michigan.

JAN'Y 27, 1886.

In the case of—

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, *vs.* WALTER J. GOULD *et al.*, Copartners, &c. } No. 2974. In Equity.

On reading and filing a stipulation signed by P. L. Shuman, solicitor for complainants, and by Dickinson, Thurber & Hosmer, solicitors for defendants, it is ordered that the time for taking proofs be, and is hereby, extended for sixty days from the date of this order; that the proofs taken under this stipulation may be used on the trial of the cause at law now pending in said court between said parties should the same be tried after the trial of the case in equity; that notice of two weeks of the taking of testimony in California shall be deemed reasonable notice.

WALTER S. HARSHA, *Clerk*,
By JNO. GRAVES, *Dep'y.*

57 *Stipulation as to California Depositions.*

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Compl'ts,
vs.
WALTER J. GOULD, *et al.*, Def'ts.

It is hereby stipulated by and between the parties to this cause, by their respective solicitors, that the testimony of George H. Ballou, Jacob S. Taber, W. J. Tilley, Thomas B. Coghill, George H. Murdock, Addison Martin, William M. Hand, Morris Newton, Charles R. Bowen, George A. Moore, all of San Francisco, and John Cushing, of Oakland, California, and such other witnesses as may be produced, may be taken in behalf of defendants, before James L. King or other notary public, at the office of Sheldon G. Kellogg, attorney-at-law, Merchants' Exchange building, San Francisco, California, commencing on the 18th day of March, A. D. 1886, at ten o'clock in the forenoon, and continuing from day to day until completed, and that the same may be read in evidence as testimony as if taken before an examiner of said court, and that an order may be entered in said cause extending time for taking proofs until sixty days after the taking of said deposition.

P. L. SHUMAN, *Compl'ts' Sol'r.*
DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

Chicago, Feb. 21, 1886.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Stipulation. Filed Feb'y 23, 1886. Walter S. Harsha, clerk.

58 *Order to Take Proofs.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

In the Case of—

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, *vs.* WALTER J. GOULD *et al.*, Copartners, &c.	No. 2974.

JAN'Y 27, 1886.

On reading and filing a stipulation signed by P. L. Shuman, solicitor for complainants, and by Dickinson, Thurber & Hosmer, solicitors for defendants, it is ordered that the testimony herein be taken, in writing, orally by questions and answers, and may be taken before any notary public, United States commissioner, or other competent officer authorized to administer oaths, at the place where such testimony is to be taken, with like effect as if the same were taken before an examiner appointed therein, and otherwise as provided in the sixty-seventh rule in equity, as amended.

WALTER S. HARSHA, *Clerk*,
By JNO. GRAVES, *Dep'y Cl'k.*

59 *Stipulation as to Copies of Consular Certificates.*

The Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN *et al.*, Compl'ts, *vs.* WALTER J. GOULD *et al.*, Def'ts.	In Equity.

It is hereby stipulated by and between the parties hereto that the certified copies of consular certificates filed in office of the collector of the port of San Francisco as follows: Five certain certified copies, marked A, B, C, D, & E, herewith filed, may be filed in said cause with the clerk of said court, and may be read on the hearing of said cause as if introduced in evidence before an examiner of said court as evidence on behalf of defendants, subject to any objection to be then made for competency, materiality, or relevancy.

P. L. SHUMAN,
Solicitor for Complainants.

Chicago, April 2, 1886.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al.* *vs.* Walter J. Gould *et al.* Stipulation. Filed April 3, 1886. Walter S. Harsha, clerk.

60 *Order Setting Hearing for June* 14.

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Wednesday, the second day of June, in the year one thousand eight hundred and eighty-six.

Present: The Honorable Henry B. Brown, district judge.

CALVIN R. CORBIN *et al.*
vs. } In Equity.
WALTER J. GOULD *et al.*

This cause is set for hearing on June 14th.

61 *Complainants' Testimony.*

In the Circuit Court of the United States in and for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

Dickinson, Thurber & Hosmer, defendants' solicitors.

GENTLEMEN: Please take notice that, pursuant to stipulation entered into in said cause in respect to taking testimony, the complainants will take the testimony of Calvin R. Corbin, Horatio N. May, George J. Reed, O. F. Hawley, James A. Doane, William M. Gamble, W. I. Howland, Charles A. Flanders, William Morgan, E. A. Schoyer, Otis A. Poole, J. C. Whitney, Sidney O. Blair, and divers other witnesses of Chicago, Illinois, before John Gray or any other notary public, at the office of Percy L. Shuman, 12 and 13 Borden block, Chicago, Illinois, beginning on the fifth day of February, 1886, at 10 o'clock a. m., and that the taking of said depositions will be adjourned from day to day until completed.

You are hereby notified to be present and cross-examine if you see fit.

Dated Chicago, Jan'y 28, 1886.

P. L. SHUMAN,
Complainants' Solicitor.

We hereby accept service of the within notice, at Detroit, this 29th day of January, 1886.

DICKINSON, THURBER & HOSMER,
Def'ts' Sol'r-.

62 In the Circuit Court of the United States in and for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Be it remembered that on the 5th and 6th days of February, A. D. 1886, personally appeared before me, John Gray, a notary public in and for the county of Cook and State of Illinois, Calvin R. Corbin, Horatio N. May, O. F. Hawley, George J. Reed, James A. Doane, Otis A. Poole, Joel C. Whitney, Charles A. Flanders, W. I. Howland, and William Morgan to testify on the part of the complainants in the above-entitled cause.

And the said CALVIN R. CORBIN, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. PERCY L. SHUMAN:

Q. State your name, age, residence, and occupation.

A. My name is Calvin R. Corbin; residence, Chicago; age, fifty-three years; occupation, wholesale grocery business and importer of teas.

Q. Are you one of the plaintiffs in this case?

A. I am.

Q. Do you know the defendants, Walter J. Gould, Edward Telfer, David E. Cady, and L. F. Thompson?

A. By reputation only.

Q. Where do you do business, Mr. Corbin?

A. 87 and 89 Michigan avenue, Chicago, Cook county, Illinois.

Q. What is the firm name?

A. At present Corbin, May & Co.

Q. How long has it been Corbin, May & Co.?

A. I think about two years.

Q. Prior to that time what was the firm name?

A. Ingraham, Corbin & May.

Q. What became of Mr. Ingraham?

A. He retired from the business.

Q. How long had the firm of Ingraham, Corbin & May been in business?

A. I think since 1868 or '9.

Q. Were they in the same business that the firm of Corbin, May & Co. is now engaged in?

A. The same business practically.

63 Q. Did your firm of Ingraham, Corbin & May import teas and sell them?

A. Yes; commencing in 1874, I believe.

Q. Where were your importations made from?

A. Japan.

Q. Have the teas which you have imported from Japan been known under any particular name?

A. Well, they have since 1879 and following that.

Q. In 1879 did you adopt any particular name as a trade-mark upon any particular kind of teas which you imported?

A. We ordered a facing in 1869 expressly to be put on the packages—"Tycoon tea" at the top.

Q. How did you come to adopt this word "Tycoon?"

A. Tea had become very much adulterated and very badly prepared, commencing and growing worse and worse from 1870, perhaps, to 1880, and we did not like to offer such teas as "pure, uncolored teas," that being then the ordinary facing of a chest; and, as we understood some of the consumers and retail dealers were objecting to the artificial color, in 1874, with our first order, we stipulated for a less degree of artificial coloring, if any, with our agents in Japan, and in 1879 we instructed our agents, Smith, Baker & Co., Yokohama, to fire our teas without any color and change their ordinary manner of preparation, which they accordingly did. The question had been under consideration, by correspondence and otherwise, with them for several months or a year, and we then adopted the course in regard to our importations which we have followed up to the present time in regard to adulterations and artificial refiring. We were impressed with the duty and wisdom and necessity of reform. Much of the tea was and had been nasty, if not poisonous. The packages, as before stated, were to be marked "Tycoon tea," a mark or brand which we had never seen on a tea package of any sort or heard of prior to that time, and it was adopted that year in the knowledge and belief that we originated it to distinguish our importations of tea. The tea thus prepared under our explicit instructions, against the judgment and friendly protests of Smith, Baker & Co., Yokohama, our agents, for commercial reasons, as stated by them, was at that time entirely new to the trade, and I believe that the tea imported by Ingraham, Corbin & May and their successors still differs from all other importations in important features pertaining to quality and purity. The first importations were advertised to consumers with hand-bills or circulars, in connection with the trade-mark we adopted, and it soon became known, wherever introduced, as "Tycoon tea" by retailers and tea drinkers. It grew into popularity in consequence of its purity and other merit. The tea was then and is now absolutely pure—all grades. The brand has stood from the beginning forward for a pure article of unusual merit, and has been a guaranty and protection to the public from adulterated, artificially colored, or "faced" tea, and the many samples of tea labelled "sun-dried" that we have examined have been decidedly inferior in essential particulars. "Sun-dried" is an absurdity applied to tea.
64 Tea cannot be properly finished in its curing by the sun.

About 1880 to 1881 we saw teas that were samples of teas that had been sold in the Northwest and said to have been sold as the same thing, as we were informed, as our tea, had the appearance of having been manipulated since their original preparation, and we were informed about that time, by parties connected with the trade, that originally-colored teas were being steamed, have the color steamed off in New York, and redried to meet the growing demand for uncolored teas, but we never learned that such tea was sold under any imitation of facing the packages or under the word "Tycoon." About that time, December, 1881, being admonished by what was going on, by what has been stated, that we should have to contend with imitations and spurious teas, we had our trade-mark formulated with a diamond-shaped device, and had it registered in the Patent Office in Washington as a notice to the trade and as a protection to ourselves, to retailers, and the tea-drinking public. The tea has been continuously advertised by us since 1879, under the brand adopted, by issuing printed circulars to the retail trade, to be distributed to customers, and most of the years since 1879 in commercial newspapers, in county papers in the various sections of the Northwest; also at State and county fairs with handbills, and we have also advertised a large and expensive banner and frame for tea signs for retailers' stores, all of which has aggregated us a large expense. Our advertising has cost us since 1870 in the neighborhood of from six to eight thousand dollars. The advertising has been substantially true in all its printed statements, not bunkum nor thunder nor exaggeration, sometimes said to be customary in advertising. As evidence of the extent of advertising I offer these three exhibits, which are hereto attached, marked, respectively, "Exhibit A, deposition of C. R. Corbin;" "Exhibit B, deposition of C. R. Corbin," and "Exhibit C, deposition of C. R. Corbin," and a page of the Chicago Commercial Bulletin, February 2, 1886, which paper is hereto attached, marked "Exhibit D, deposition of C. R. Corbin," to show the remarks on the "Tycoon" tea and general advertising.

Q. How long has that advertisement and that price-list been published in the Chicago Commercial Bulletin?

A. Four or five years, I think, about as it now stands.

Q. About what is the circulation of that price-list, and what has it been during that time?

A. I have been told it runs from four thousand to ten thousand.

Q. And to what people?

A. To the retail trade of the country. I have here a photograph copy of a colored engraving representing a picture about 24 by 42 inches for retailers to use in their stores.

Said photograph copy is hereto attached, marked "Exhibit E," deposition of C. R. Corbin.

Q. About how many of those banners have you circulated, and where have you circulated them?

A. We have had two thousand copies printed, and think we have circulated about half of them.

65 Q. During what time, how long prior to the beginning of this suit, did you begin to circulate these pictures?

A. This particular one has been in circulation since the fall of 1874.

Q. And you have had others similar to it, have you?

A. Something like two years; previous to that we had another made in Japan. Our stationery has also been stamped with a design from time to time continously for several years. About the time that we had the mark recorded we affixed the trade-mark shown by the diamond-shaped design to our office stationery, and I attach hereto as exhibits six papers showing such design.

The office stationery produced by the witness, being a postal card, invoice, blank receipt, order, and two bill-heads, are hereto attached, marked "Exhibit F."

Q. Now state, Mr. Corbin, about what territory you have covered with your trade for this Tycoon tea—in what States and countries.

A. We have been as far West as Colorado, and, I think, nearly all of the Territories this side of the Rocky Mountains, and Kansas, Missouri, Nebraska, Minnesota, Winnepeg, Wisconsin, Illinois, Kentucky—I think, although that is not much of a tea State—Ohio, Indiana, Michigan, Pennsylvania, and Vermont.

Q. What proportion of your trade has been in the State of Michigan?

A. Well, I think it commenced with about a fifteenth or twentieth as an estimate, and, it being a large tea-drinking State, particularly Japan tea, I think it is now in the neighborhood of one-*of* sixth of all our sales.

Q. How much were your importations in packages in 1879 and 1880?

A. Well, 1879 was an experimental year.

Q. How many packages did you bring in that year?

A. Upwards of three hundred—325.

Q. Were they marked with this word "Tycoon?"

A. Yes; they had the mark "Tycoon tea" at the top in a sort of scroll.

Q. That was prior to the time when you adopted the diamond to carry the word in?

A. Yes; that was a year or two previous.

Q. Was that word "Tycoon" made prominent upon the facing?

A. With about the usual prominence at that time. At the beginning it had about the usual prominence on a tea facing. We made a change into the diamond afterwards in order to make it more conspicuous.

Q. In what year was that? Was it 1881 that you changed to the diamond?

A. I think it was the spring of 1881 or fall. The spring of 1881, I think.

Q. How many packages of tea did you bring in marked "Tycoon" in the year 1880?

A. Upwards of three thousand; in 1881 upwards of six thousand four hundred. These packages weighed from sixty to seventy pounds, and heavier later on. At present they average seventy-three pounds. In the year 1882 upwards of six thousand
66 packages of larger weight, and in 1883 rising five thousand nine hundred packages of still larger average weight; 1884, rising six thousand two hundred packages; 1885, 6,398 packages, average weight about seventy-three pounds each. The crop of 1886 will not commence to be received here until June.

Q. Have you your orders out for the season of 1886?

A. Not yet. They usually go out in March and April. These teas were different grades, but they are all prepared in the same manner in regard to color and refiring.

Q. Who manufactures these teas?

A. Smith, Baker & Co., Yokohama.

Q. Have you given them any special orders or directions regarding the manufacture of the teas for you?

A. In the commencement of the change to a different kind and quality of tea we gave them explicit orders as to their being without any artificial color and preparation relating to refiring, which is very important.

Q. In that respect do these teas differ, when so manufactured, from the ordinary teas of commerce?

A. We believe they do. We have been so informed by our agents, and it is recognized, I think, from remarks that I have had made to me by those engaged in importing that there is a difference in preparation.

Q. Do the dealers and consumers of these teas recognize a difference as existing between the Tycoon tea and the ordinary teas of commerce?

Solicitors for defendants objected to the question as incompetent, irrelevant, and immaterial.

A. That is our understanding of it. That is the object of our printing, the object of the information that we put out in printing and otherwise, to call the attention of consumers to the superiority of our tea.

Q. When you get orders from retail and wholesale dealers throughout the country for teas, by what name are the teas so ordered known?

A. Usually it is expressed. They order "Tycoon tea." They talk about Tycoon tea.

Q. Have you specimens of orders which have been received in the course of your business for the "Tycoon" tea?

Solicitors for defendants objected to the question as incompetent, irrelevant, and immaterial.

A. I have. A number of them are of recent date. I think they were received yesterday. They recite, "Send me thus and so Tycoon tea."

Witness produces thirteen orders, which are hereto attached, marked " Exhibit G, deposition C. R. Corbin."

Q. What are these papers now shown to you? Handing to witness papers marked " Exhibit G."
A. Mail orders for Tycoon tea.
Q. Are they or are they not fair samples of the orders which are ordinarily received for these teas?

Solicitors for defendants objected to the question as incompetent, irrelevant, and immaterial.

67 A. They are all samples taken probably at random. Part of them are yesterday's receipts.
Q. How far back do these go?

Solicitors for defendants objected to the question on the same grounds as before.

A. Do you mean such orders as those?
Q. Yes.
A. My conviction and memory of it is that they have been more or less so since 1881.
Q. Were these orders received by Corbin, May & Co. in the ordinary course of business?

Solicitors for defendants objected to the question on the same grounds as before.

A. They were.
Q. Were those orders filled, if you know, by the shipment of merchandise?

Solicitors for defendants objected to the question on the same grounds as before.

A. They were.
Q. In reply to requests for shipments of Tycoon tea, as shown in these orders, what merchandise was shipped?
A. The Japan tea, without trade-mark, and that which was distinctively called Tycoon.
Q. You say that you have a large trade in Michigan. Will you please look at that paper and state what it is? Handing paper to witness.
A. That is a list of some of the towns in the State of Michigan where Tycoon tea has been sold by Ingraham, Corbin & May and Corbin, May & Co., and where, as a rule, Tycoon teas are continuously on sale by retailers in these town so listed. There may be a few exceptions in regard to tea being on sale in all these towns.

Solicitors for complainants offered in evidence the paper referred to, which is hereto attached, marked " Exhibit H, deposition of C. R. Corbin."

Q. How are these teas known to consumers?
A. We are informed—of course I don't see the consumers much—that they are known as " Tycoon tea." Usually or frequently or

generally they call for it as "Tycoon tea." That is the best of my knowledge and belief.

Q. Are teas ordinarily sold to the consumer in the original package?

A. The great bulk of the tea is sold without stamp or label. Some of our customers have had wrapping paper. We have had wrapping paper printed with the Tycoon tea trade-mark upon it.

Q. Do you know how these Tycoon teas are ordinarily exposed for sale by the retail dealer?

A. He usually places his tea in a conspicuous place in his store, in a chest, with the facers visible, prominent, perhaps. As he requires a package of a particular grade or kind of tea it is the custom to open up the package and take out all or part, and then sell from it in bulk from a tea can or caddy, holding variously from twenty to a hundred pounds of tea.

68 Q. Then the tea is known by the name rather than by the appearance of the label upon the chest, is it not?

A. Ordinarily consumers may enquire for black tea or green tea, young hyson, imperial, or English breakfast tea; those are China teas. If a consumer becomes attached to an advertised brand of tea he would very likely designate it in calling for tea. If he became attached to "Tycoon tea," had faith in it, or it had some excellency well known to him, he would inquire for that kind of tea.

Q. Do you know whether this word "Tycoon" has or has not been commonly used by others than Ingraham, Corbin & May or Corbin, May & Co. upon teas which have been sold in the territory which you have named?

A. I believe, to the best of my knowledge and conviction, that in the territory that I have named where we sell these teas that there never has been a package of tea faced "Tycoon tea" sold, until this case of Gould & Co., besides our own.

Q. Do you know whether any tea is sold under that name, or has been since you adopted this trade-mark, by any one other than your firm?

A. Not to my own knowledge. I have conferred with our salesmen, who have traveled more or less in most of these States, and they say they have never seen or heard of any tea having been sold as "Tycoon tea" except last season in Michigan.

Q. The second paragraph of this bill alleged that about the time this bill was filed you were about to receive some 480,000 pounds of the "Tycoon tea" and offer it for sale in the United States. You may state whether or not you did receive that amount of tea.

A. That was all received.

Q. It all has been received?

A. Yes.

Q. Has this tea to which you have attached the word "Tycoon" as a trade-mark been known since the year 1879 in the American market by any other name or designation?

A. Not to my knowledge. I have heard of tea dubbed or denominated "sun-dried" as being sold called the same thing. We deny that it is the same.

Q. Do you mean that the tea called sun-dried has been put upon the market and represented as a tea equal to the Tycoon? Is that what you mean?

A. The same thing.

Q. You have heard of such representations having been made?

A. Yes.

Q. You have testified that you registered the trade-mark word in 1881.

A. We adopted the words in 1879.

Q. And you had it registered in 1881?

A. Yes.

Q. You may look at that paper and state what it is.

A. This is a certificate of the registry of the trade-mark word "Tycoon."

Solicitors for complainants offered the certificate in evidence, which is marked "Exhibit J."

69 Q. The application for the registration of that trade-mark is attached thereto?

A. Yes.

Q. I will ask you to look at that paper and state what it is.

A. This is what is called a tea facing, which is attached to the wood part of the chest under the matting, and also upon one of the outer sides of the matting.

Q. Is that a fair sample of the facing used upon your teas?

A. This is an exact copy, the variation being sometimes in the color; it is an exact copy in design, as far as I know.

Q. There are figures upon that facing. What do these figures indicate, and are they always the same?

A. They indicate a certain line of tea. They may be a part of what is called a bracket; it may stand for what is called a bracket in an invoice covering several packages; it might be nineteen to twenty-five of the same tea, more or less.

Q. What I want to know is whether that number is always the same on every facing.

A. That number changes according to the importation; according to the invoice.

Q. Is there anything on the facing to indicate the grade or quality other than the word "Tycoon?"

A. No; we have various grades under the same name; we have siftings from the same teas.

Q. These various grades are all manufactured in the same way?

A. Manufactured in the same way. The siftings are sifted from the same teas, the variations being in the leaf and grade of tea, in the purity.

Solicitor for complainants offered in evidence the copy of facing produced by the witness, which is hereto attached, marked "Exhibit K, deposition of C. R. Corbin."

Q. You have testified that the defendants' named in this bill have sold teas in Michigan and elsewhere under the name of "Tycoon" and with the name "Tycoon" upon the facings on the chests. You may state fully your knowledge with regard to that matter.

A. My information as to that matter came from our customers.

Q. Who, and in what way?

A. I think Mr. Hamilton, of Jackson, and a party at Battle Creek, Mr. Hosmer.

Q. Is it evidenced by written statements, or did they give you the information orally?

A. By written statements in those two cases.

Q. Look at that letter, state what it is, and read it.

A. This is a letter from W. H. Hamilton, Jackson, Michigan; it is dated August 4th, and it was received by us August 6th, 1885; it came to us by mail. The letter commences—

"DEAR SIR: Last evening W. J. Gould, of Detroit, their man, was here, and he was in high glee, saying that he could give me the Tycoon tea now. I asked him what he meant. He said that they were going to run the Tycoon brand, and he would show me the facings of the chests this morning; so he came in this a. m. and showed me the facing, and the brand was Tycoon tea. I did not let him know that I cared for it, but it made me feel a little nervous,
70 for if they can run this brand there is some that will do all they can against me here. He says that you have no more right to the copyright than they have. I only write this to put you on your guard, so you can check it before it goes into execution. You know what you can do, and you must protect me to the last. Trade is pretty good at present.

Y'rs truly, W. H. HAMILTON."

Solicitor for complainants offered the letter referred to, which is hereto attached, marked Exhibit "L."

Q. What did you do, if anything, upon receipt of that letter?

A. We replied to it through our attorneys, Shuman & Defrees. I don't know, but my impression is that we would have written Mr. Hamilton to the effect that we should attend to it.

Q. Please look at those papers and state what they are, if you know. Handing paper to witness.

A. One is a letter from Allen Raymond, Battle Creek, Michigan.

Q. What is the date of it and when was it received?

A. It is dated September 17th, 1885; received September 18, 1885. The other is a postal card from the same party, dated August 31, 1885.

Q. You may read first the letter.

A.—

"BATTLE CREEK, MICHIGAN, *September* 17, 1885.

Corbin, May & Co., Chicago, Ills.

GENTLEMEN: Yours of 16th received, re. "Tycoon chop" tea. I wrote you some time since that they had twenty-five half chests Tycoon chop, and of course supposed you would know they bought them to sell against your Tycoons and not for an ornament, and when I wrote you they had the tea in stock you took no chances on my word, for I saw the goods before I wrote you, and now they have the goods exposed in both windows and are talking Tycoon chops three pounds for one dollar, and of course it interferes with L. & J. and my own trade in the teas. I have been surprised that there has been nothing done before this, as I supposed if there was any virtue in a copyright C., M. & Co. would, without any delay, assert their right. Awaiting your action in regard to above, I am yours, &c.,

ALLEN RAYMOND.

You will see their advertisement in the 'Sunday Morning Call' mailed you Monday.

A. R."

Solicitor for complainants offered the letter in evidence, which is hereto attached, marked "Exhibit M, deposition of C. R. Corbin."

The witness then read the postal card as follows:

"Battle Creek, Michigan, *August* 31, 1885.

Moulton & Stanley to-day received 25 half chests Tycoon chop tea from W. J. Gould & Co., Detroit. If you propose standing behind the tea now is the time to do it before the great 'Tycoons' are superseded by 'Tycoon chop.'"

Respectfully, ALLEN RAYMOND.

Postal card offered in evidence, marked "Exhibit N."

Q. Upon receipt of the letter from Mr. Hamilton, at Jackson, what did you do, Mr. Corbin?

A. We instructed our attorneys to attend to the matter in the proper way—to ascertain if it was a fact.

Q. Ascertain from whom?

71 A. By investigating, writing our customers that called our attention to it for the evidence as soon as any should be apparent that it was sold.

Q. Did you give any directions to write any letter to W. J. Gould & Co.?

A. We did about that time, I think.

Q. You may read the letter which you have there before you.

A. We received this letter, dated August 7, 1885:

"Messrs. Corbin, May & Co., 89 Michigan avenue.

"Gentlemen: We have to-day mailed a letter to W. J. Gould and Co., Detroit, calling their attention to the reported use by them of the trade-mark owned by you for Tycoon tea, as requested by you, and enclose you a copy of the same, together with papers left with us. As soon as we hear from these parties we will advise you. We are,

"Very respectfully, SHUMAN & DEFREES."

Solicitor for complainants offered the letter in evidence, which is hereto attached, marked "Exhibit O."

Q. Have you a copy of the letter which was mentioned in that letter and which was written to W. J. Gould & Co.?

Solicitor for defendants produces the letters of Shuman & Defrees written in pursuance of the foregoing instructions of Corbin & May.

Solicitor for complainants offered in evidence the following letters:

Letter, dated August 7, 1885, from Shuman & Defrees to the defendants, marked "Exhibit P, deposition of C. R. Corbin."

Letter from Shuman & Defrees to the defendants, dated August 22, 1885, marked "Exhibit Q, deposition of C. R. Corbin."

Letter from the defendants to Messrs. Shuman & Defrees, dated August 31, 1885, marked "Exhibit R, deposition of C. R. Corbin."

Letter from Shuman & Defrees to the defendants, dated September 1, 1885, marked "Exhibit S, deposition of C. R. Corbin."

Letter of Shuman & Defrees to the defendants, dated September 2, 1885, marked "Exhibit T, deposition of C. R. Corbin."

Letter from Shuman & Defrees to the defendants, dated September 3, 1885, marked "Exhibit U, deposition of C. R. Corbin."

Letter from Shuman & Defrees to the complainants, dated September 1, 1885, marked "Exhibit V, deposition of C. R. Corbin."

Solicitor for complainants also offered in evidence copy of advertisement of defendants in the Detroit Commercial, August 8th and August 22nd, 1885, marked "Exhibit W, deposition of C. R. Corbin," and advertisement in the Battle Creek Sunday Morning Call, September 13, 1885, marked "Exhibit X, deposition of C. R. Corbin."

72 Solicitor for defendants admits the publication by the defendants of the advertisement in the Detroit Commercial, but knows nothing about the advertisement in the Battle Creek "Call."

Q. What steps did you take to call the attention of Moulton & Stanley at Battle Creek, Michigan, to the sale of "Tycoon chop?"

A. We received a letter dated September 2, 1885, from Shuman & Defrees containing what purports to be a copy of a letter of the same date to Moulton & Stanley, Battle Creek, Michigan, which letters I hand to the notary.

Solicitor for complainant offered in evidence the letters referred to, marked "Exhibit Y, deposition of C. R. Corbin."

Q. Look at that and state what it is, Mr. Corbin.

A. This is a letter from our Mr. Gamble, who travels in Michigan at times selling teas and groceries. It is dated Quincy, Michigan, August 5. It states as follows:

"C. C. Lee, Coldwater, ordered a half chest of siftings and one of leaf to try. Will make his order later. W. J. Wilber & Co. here buys most of his groceries of W. J. Gould & Co., Detroit. Their man showed him a chest facing branded 'The Tycoon Chop' in the form of an arch at top of facing. He told Wilber — had not sold any in this town. Will look out for it and report further.

Respectfully, WILLIAM M. GAMBLE."

Counsel for defendants objected to the contents of the letter as hearsay, being the statement of Gamble and not the statement of a witness upon oath.

Mr. SHUMAN: I only want the contents for the purpose of identification.

Solicitor for complainants offered the letter in evidence, said letter being hereto attached, marked "Exhibit Z, deposition of C. R. Corbin."

Solicitor for defendants objected to the introduction of letter as incompetent, immaterial, and irrelevant.

Q. Who is Mr. Gamble?

A. Mr. Gamble is in our employ.

Q. Do you know his handwriting?

A. I do.

Q. State whether or not the letter, Exhibit Z, is in his handwriting and signed by him.

A. It is his handwriting, and the signature is his.

Q. I will ask you whether you notified W. J. Gould & Co. as soon as you heard that they were offering tea under the name of "Tycoon" that you claimed to be the owners of the exclusive right to use that mark upon tea?

A. We did so, through our attorneys, notify them.

Q. Do you know what your attorneys wrote, if anything, to W. J. Gould & Co.?

A. We had a copy of the letter. I remember it in a general way.

Q. Isn't it a fact, Mr. Corbin, that you received the letter marked "Exhibit R" of August 31st, signed "W. J. Gould," in reply to your directions to notify them through your attorney?

A. We received such a letter.

73 Q. Do you know whether W. J. Gould & Co. or W. J. Gould continued after your notification to them to offer teas under the name of "Tycoon" in the market in Michigan?

A. We saw copies of the Detroit Commercial paper with their advertisement in it, stating that they had "Tycoon chop"—"Tycoon tea."

Q. Is that the advertisement which you have attached as an exhibit?

A. Yes, sir; that is a copy of it.

Q. Did W. J. Gould & Co. ever inform you that they claimed the right to sell teas under the name of "Tycoon?"

A. They did not, directly or any other way, that I know of, that was intended for information for us.

Q. What did they say to you?

A. What they said is contained in the letter of W. J. Gould of August 31.

Q. Do you know whether or not the tea which was offered and sold by W. J. Gould with the name "Tycoon" was the genuine "Tycoon" tea?

A. It was not, as we understand it.

Solicitor for defendants objected to the question and the answer on the ground that it is not shown whether the witness knows or not.

Q. Do you know whether or not that was genuine "Tycoon" tea?
A. We have information from our agents that leads us to the conviction——

Solicitor for defendants objected to the witness stating the information of agents as not being the best evidence, not being the personal knowledge of the witness.

Q. State what you do know about it.
A. That they were not making for other parties——
Q. That who were not making?
A. Smith, Baker & Co., our agents, were not making teas for other parties like ours in all respects.
Q. Did W. J. Gould & Co. buy the tea, Whyo, they offered and sold under the name of "Tycoon" from you?
A. They did not.
Q. Do you know whether they bought it from any of your agents or servants?
A. I know from their own statements.
Q. What do you know from their own statements?
A. From their own statements we have reason to believe that they gave an order to a party named C. P. Low & Co. for a hundred packages of tea, to be faced "Tycoon chop."
Mr. HOSMER: Those statements were embodied in a letter written to you, were they not?
A. Yes, or in their answer on file in this case.
Q. How long have Smith, Baker & Co. been your manufacturing agents?
A. Since 1879, inclusive.
Q. Have you had any correspondence with Smith, Baker & Co. since the commencement of this action in regard to the "Tycoon tea?"

Solicitor for defendants objected to the question as incompetent, irrelevant, and immaterial.

A. We wrote them that we had copyrighted our brand, and requesting them to notify the trade and their customers that we
74 had done so, and not to use the mark for any other shippers or customers.

Q. To your knowledge, have they respected your request in that regard?

Solicitor for defendants objected to all evidence of correspondence between the complainants and the firm of Smith, Baker & Co. as incompetent, irrelevant, and immaterial.

A. We have their statements that they have not used it for others.
Q. Have you ever authorized the sale of any teas called "Tycoon" since you adopted this word in the markets of the United States by any other wholesalers than yourselves—that is, jobbers or importers?

A. We have never authorized the use of our trade-mark except it came directly from us.

Q. What is the amount of your trade in "Tycoon teas" in dollars per annum, Mr. Corbin?

A. For several years past it has run from $160,000 to $175,000—$150,000 to $175,000 per annum.

Q. Have any others of your retail customers, save those you have mentioned here, given you information of the sale by Gould & Co. of "Tycoon teas" since you notified them not to sell their tea?

Solicitor for defendants objected to the question as incompetent, irrelevant, and immaterial.

A. I don't remember that they have; I think not, except some cases of hearsay that Gould & Company's salesmen have claimed that they had the tea.

Q. What is the effect upon your business to have other people offer teas of a different manufacture than yours or teas under the same name as yours—"Tycoon?"

A. As we believe that our tea is superior to others, if the tea was promiscuously offered as "Tycoon tea" that did not have come from us it would be an injury to the reputation of the tea, inasmuch as it would be much poorer tea and a different tea in other respects; and if such purchasers for consumption have never used our tea and were buying it on its reputation it would be an injury to the reputation of our tea. It might be carried so far as to destroy its reputation in a locality; people are very tenacious about buying something they supposed they had before which was not satisfactory.

Q. I will ask you whether or not the sale of the tea which had been put upon the market under this name by W. J. Gould and Co. has been a damage to your business, as you have set forth in your bill of complaint?

A. I think it has; to what extent I cannot state; it would have that tendency.

Q. What have your customers stated to you upon that point?

Solicitor for defendants objected to the question as incompetent, irrelevant, and immaterial.

A. The letters that we have introduced here show how the customers regard the tea.

Q. What have your salesmen said in regard to it?

A. The salesmen said it would cause us a good deal of
75 trouble, and might injure the reputation of our brand by inferior teas being sold, and create dissatisfaction with those that are now selling it.

Q. Have you ever discontinued the use of the word "Tycoon" since you adopted it first?

A. Never. All our Japan teas that are prepared in that manner, which were the bulk of the teas that were brought, were faced, branded, and sold "Tycoon tea."

Cross-examination by Mr. Hosmer:

Q. Mr. Corbin, what is the business of the firm of Smith, Baker & Co.?

A. They claim to be—one branch of their business is the commission business.

Q. They are tea manufacturers, are they not?

A. They are tea purchasers on orders and do what is called manufacturing or buying and refiring and preparing for export. They buy from the tea-growers or the tea-growers' agents, the middlemen, as they come down to the market and prepare and ship.

Q. Make the final preparation for the shipment of the teas to this country?

A. Yes.

Q. And your purchases or importations—that is to say, of the "Tycoon" teas—are made from Smith, Baker & Co., are they not?

A. They are prepared by them.

Q. You send your order to Smith, Baker & Co. They purchase the teas and ship them to you?

A. We order them and had been in the habit of ordering special preparations, which they have executed. They have executed the orders as we required.

Q. They manufacture in accordance with your desires?

A. They do. They so state that they do.

Q. They manufacture for other people as well as yourselves, do they not?

A. Oh, certainly; they prepare teas for others—that is, they state they do.

Q. Do you know the firms of Coghill & Simon and H. Levi & Co.?

A. Not personally.

Q. Do you know of them by reputation?

A. I have heard of them since the commencement of this case.

Q. Do you know where they purchase their teas?

A. I do not, except in so far as has been stated in connection with this case.

Q. Do you know the firm of Taber, Harker & Co. or Philips, Tabor and Co.?

A. Only in the same way.

Q. Then you could not state as to where they have obtained teas, whether from Smith, Baker & Co. or not?

A. I could not of my own informatiion.

Q. Are you acquainted with the brands of teas for sale and which have been offered for sale in the San Francisco market for the past twelve or fifteen years?

A. I have not to any extent. I don't know that I have
76 seen any of them in San Francisco since about the time we
received teas from McConey & Company, I think it was.

Q. You could not testify as from your knowledge whether the word "Tycoon" has been used in San Francisco or on the Pacific coast?

A. I could not, except as has been stated in connection with this case by the defendant.

Q. You never heard the use of the word "Tycoon" in San Francisco or on the Pacific coast until this matter was agitated in the manner you have detailed?

A. I never heard or knew of any teas being faced "Tycoon" or with the word "Tycoon" upon the facing previous to our adoption of it. I believe we invented it—we originated it.

Q. Have you inquired of the firm of Smith, Baker & Co. whether they fired for other people who used the word "Tycoon?"

A. We have recently. We have their letters stating that they have in a small way.

Q. Fired for whom?

A. Possibly they had previous to our stating to them that we had adopted the trade-mark—that they had used the word previous to our instructions not to use it; that was for a few parties, in a small way.

Q. Did they tell you what time the word "Tycoon" had been in use by them?

A. They did not.

Q. Is this the letter you have reference to (handing a letter to witness)?

A. Yes, sir.

Solicitor for defendants offered the letter in evidence. Solicitors for complainant, to preserve the letter for their own convenience, stipulate that a copy of the letter, as dictated to the stenographer, may be used.

" New York, *February* 1, 1886.

Messrs. Corbin, May & Co., Chicago.

Dear Sirs: We have for acknowledgment your letter of the 30th ult., and note contents with due care. Mr. Morse expects to sail from Liverpool on the 4th inst., so will be due here about the 15th inst. In answer to your request we have just wired you that we have done business with Messrs. H. Levi & Co., Tabor, Harker & Co., and Simon Coghill & Co., but whether any teas was ever shipped them branded "Tycoon" or not we are unable to say, having no records of our firm's shipments from Japan dating so far back as 1876 and earlier. From time to time small shipments marked "Tycoon" may, however, have been made, but without any special point being made regarding the mark. We shall be glad to receive a copy of your testimony, and have no doubt as to our ability to confirm the same.

Your letter handing check for $300.83 has been received.

We remain, dear sirs, yours faithfully,

SMITH, BAKER & CO."

77 Q. Where is your tea imported—at the port of San Francisco or New York?

A. It comes to both ports. I think nearly every season since 1879 a part of our importations have come to San Francisco and part by the way of New York—the Suez canal.

Q. Do you know of the use of the word "Tycoon" prior to your own use, as applied to others than Japan teas?

A. I have never seen it. I never saw it before we adopted it nor heard of it previous to the time of our adoption of it.

Q. Do you sell in any other foreign country than Manitoba?

A. I cannot tell now. I don't know whether our salesmen may have done so sometimes. We have customers, I think, in other parts of Canada, and whether tea has been sold or not I cannot say. We contemplated and so discussed the matter with our agents about doing a large business in Canada, but we have not made any special push as yet.

Q. Do you sell in Manitoba?

A. We shipped some goods occasionally there some two or three years ago to Winnipeg.

Q. Have you shipped to any part of British North America since that time?

A. Well, as I have stated, I don't know what may have been done. I cannot state positively, of my own knowledge, that they have now, without looking the matter up and running back over the books.

Q. You cannot call a customer in British North America outside of Winnipeg, can you?

A. I cannot remember names now.

Q. You cannot remember a point of shipment except Winnipeg, can you?

A. I think I remember one, but I cannot give it.

Q. And you haven't shipped to Winnipeg for about three years, have you?

A. I think it is two or three years—that is, to my knowledge; I cannot say. There have been sales of other goods made there, and there may have been tea.

Q. You have no agent traveling in Manitoba or Canada or other of the provinces of British North America, have you?

A. No, sir.

Q. So, if there has been a case it must have been an occasional order which has come direct?

A. Yes; one man was in person that I was thinking of, and there have been others in person buying goods. I cannot say how many have bought the tea.

Q. And you can't recollect any shipment for the last two or three years or since the Winnipeg shipment?

A. I think it is two years—two or three years.

Q. In what respect does your manner of firing teas differ from the other uncolored teas?

A. That is rather a secret of our business. We have ordered a different firing, all of which we can sustain and have it corroborated, without any doubt. I can bring letters to that effect, if necessary.

Q. Do you know whether your process of firing is adopted by anybody else?

78 A. We believe from our own tests—that is, tests that we have made variously from large number of samples—that it is different; we believe it is different.

Q. What is the superiority of your firing over the other firing—

that is to say, what different quality in the tea does it produce or does it retain?

A. I will not answer that question, but I will make this statement: that whether teas are fired longer or shorter, or high firing with a hot fire, or fired with less heat, produces a different effect upon tea. A low-fired tea will not keep; more of the moisture is left in, and the properties that are supposed to be injurious in the tea. I think theine is one of them.

Q. Do I understand you have any hesitancy in pointing out the superiority of your tea? *Q.* I do not ask for the process, but your teas over other uncolored Japan teas.

A. I doubt if there are any other strictly uncolored Japan teas.

Q. You never had any within your notice?

A. I have seen samples that were sold for uncolored Japan teas to the retail trade that were so badly colored that it showed it in the cup.

Q. Then the essential difference between your teas and the other teas, as I understand it, is the fact that your teas are strictly uncolored and the others are not?

A. That is one thing, and another thing is the uniformity of our degree of firing. Perhaps that will answer your question.

Q. I understand from that answer other teas are variable?

A. I will say uniformity of extent of our degree of firing.

Q. Do I understand you that you are the original importers of uncolored Japan teas?

A. No; I think when Japan teas were first introduced and advertised—that was away back in 1860—that they were uncolored, and the competition for nice-looking teas and the endeavor to give Japan teas a wider sale led to different degrees of artificial color, and at the time we took it up the condition was very bad.

At this point recess was taken to 2 o'clock p. m.

Parties reassembled at 2 o'clock p. m., when the cross-examination of C. R. Corbin was resumed by Mr. Hosmer, as follows:

Q. You say at the present time you don't know of any strictly uncolored Japan teas except your own?

A. I say I have my doubts about there being any, although they have very much improved the color. There is undoubtedly some that are very nearly pure, and possibly there are some that are pure, but, to the best of my judgment, all the samples that I have seen have been either slightly or considerably faced.

Q. Have you ever examined defendants' tea, sold under the name of "Tycoon chop?"

A. I put it on the table and drew it when we got it in, along with our tea, and have also drawn it once since.

Q. From whom did you get that?

79 A. Mr. Shuman sent that up from Battle Creek. Mr. Shuman bought it for us at Moulton & Stanley's, in Battle Creek.

Q. What was the result of your drawing that tea as compared with your own?

A. There did not appear to be very much difference; there was some little difference in the color of the tea.

Q. Was that a colored tea?

A. That was the question. It had the appearance of being slightly faced.

Solicitor for complainants objected to this line of testimony on the ground that the question of quality between the tea of the complainants and defendants cannot enter into the defense of this case.

Q. What would be the value of that tea as compared with your own tea on the retail market?

Objected to by solicitor for complainants.

A. I cannot give the retail value very accurately; retailers in different localities and different retailers vary very much in the profit they make on tea.

Q. How did it compare in value with your own "Tycoon?"

A. We have different grades of our tea.

Q. What grade of your tea would it compare favorably with?

A. I made a second drawing of it afterwards, and it did not appear so well as it did at first; it seemed to have more of a stale, slightly acid flavor; it appeared to deteriorate, and I should place the grade of it as against tea that we get in five-package lots, with a special discount off, which we get about twenty-seven cents for—twenty-six or seven cents. In speaking of the value of defendants' tea I place that grade of leaf, a grade or quality of leaf as it was originally. Different treatment might have changed the value at that time, after the tea had stood several months.

Q. Did you sell to Mr. Hamilton, of Jackson?

A. Yes, sir.

Q. What grade of your own tea had you been accustomed to sell him?

A. We sell him two grades—two or three grades.

Q. Do you remember what they are? You have a full list of your grades in your price-list, haven't you?

A. Yes, sir; I think we sell him a grade that brings about thirty-two cents.

Q. What do you mean when you say it brings about thirty-two cents?

A. We get thirty-two cents; about that—that is, about, without looking it up—what we call our thirty-three or four cent tea—from thirty-two to thirty-four cents—and a grade from twenty-eight to thirty cents, and a grade of siftings from the same tea, in the neighborhood of twenty cents. I think we have sold him at times a still higher grade—about forty cents.

Q. You never heard of this tea being sold to any of your customers, did you?

A. This colored tea?

Q. This Gould tea; you never heard of any of it being sold to your customers, did you?

A. No; I don't know of their effecting any sales, but I
80 think there was a party at Charlotte. I don't know whether
he had been our customer or not.

Q. Was it Moulton & Stanley?

A. No; they are at Battle Creek.

Q. Who is the party at Charlotte, do you remember?

A. Lamb & Spencer; I am not certain; my impression is they may have been our customers.

Q. When did you sell to them?

A. We sold them something like a year and a half ago; the crop previous to this last crop, if we sold them at all.

Q. You have not sold them since?

A. We have not.

Q. What did you sell them—"Tycoon?"

A. Yes; if we sold there they were "Tycoons."

Q. Are you sure you sold them?

A. No; my recollection is that we sold to some party at Charlotte about a year and a half ago. Whether it was Lamb & Spencer or some other party I don't remember.

Q. You couldn't say whether it was Lamb & Spencer or somebody else?

A. No, sir.

Q. All the correspondence you had with Mr. Gould has been set forth and attached to your deposition, has it not?

A. All that I remember of. My memory is that Messrs. Shuman & Defrees carried on all the correspondence.

The signature of the witness to above deposition was waived by agreement of counsel.

81 And the said Horatio N. May, having been first duly
sworn to testify the truth, the whole truth, and nothing but
the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. Percy L. Shuman:

Q. State your name, age, residence, and occupation.

A. My name is Horatio N. May; I am of lawful age, and am in the wholesale grocery business; residence, Chicago.

Q. You are one of the plaintiffs in this case, Mr. May?

A. I am.

Q. How long have you been in the grocery and tea importing business?

A. Twenty-odd years.

Q. You were in the firm when Mr. Ingraham was a member?

A. I was.

Q. And you continued in the business of the firm after his withdrawal?

A. Yes, sir.

Q. Was there a conveyance by Mr. Ingraham of all his right, title, and interest in the business to the present firm of Corbin, May & Co.?

A. There was.

Q. When did you begin importing teas?

A. I think it was in 1879.

Q. Were the teas which you imported called by any particular name?

A. They were.

Q. What was the name?

A. Tycoon tea.

Q. Will you state your knowledge of the origin of the word "Tycoon" as applied to these teas by your firm?

A. I don't know that I can tell exactly.

Q. When did you begin to use the word "Tycoon" upon teas?

A. I think it was in 1879.

Q. At that time had you any knowledge of the word "Tycoon" having been previously used by other parties upon teas imported and sold in this country?

A. I had not.

Q. Who are the manufacturers of these teas which you have imported under the name of "Tycoon?"

A. Smith, Baker & Co.

Q. Where are they located in the tea business?

A. Their house is in Yokohama, Japan.

Q. That is where the tea is made; put up and prepared for shipment?

A. That is where the tea is put up, I suppose; yes.

Q. Do you know whether Smith, Baker & Co. had, at the time you adopted this word "Tycoon" for use upon your teas, any instructions in regard to the preparation, curing, firing, or other means of manufacture of the teas which were to be imported under that name?

A. Yes; I did know in a general way, although my partner, Mr. Corbin, was the tea man, and had full charge of that department.

Q. You are acquainted with the ordinary teas of commerce, I presume?

82 A. Yes.

Q. And Japan teas particularly?

A. Yes, sir.

Q. Do you know whether the teas which are manufactured and imported by you differ as to the mode of manufacture and in their general character from the ordinary teas of commerce?

A. Well, I am not as [an] expert, but I have every reason to believe that they are entirely different from other teas.

Q. By what name and to what extent are these teas sold in the United States by you?

A. They are sold by the name of the "Tycoon" tea and sold largely over the Northwest and in Ohio and Michigan and other States.

Q. Have you a very large market for them in the principal cities of Michigan?

A. We have a large trade for them in Michigan.

Q. Are these teas popular under that name in the market?

A. They are.

Q. Do you know whether they are bought and sold by any other name than "Tycoon?"

A. I do not.

Q. They may be, you think?

A. These same teas?

Q. Yes.

A. No; I don't think they are.

Q. As far as your knowledge extends, they are always sold by that name?

A. Always sold by that name.

Q. By the retail dealer, and they are so purchased and known by the consumer, are they?

A. They are.

Q. I understand you to say you have no personal knowledge of the details of any of the instructions which may have been given to Smith, Baker & Co. in regard to making up these teas?

A. I have, in a general way.

Q. You may state just about what your understanding of the matter is in that regard.

A. My understanding of the matter is that they were instructed to make these teas entirely without color and to make them different from teas that were made for anybody else.

Q. So far as your knowledge of the matters —, are you aware of any person else in the United States having sold the same kind of teas—and by the same kind of teas I mean of the identical manufacture—under the same or any other name?

A. No; I am not.

Q. Do you know whether any teas have been sold in Michigan or elsewhere in the United States by anybody under the name of "Tycoon" or "Tycoon chop?"

A. Well, I suppose I do; of course I have not personal knowledge.

Q. Have you any information in regard to the matter?

A. Yes; I have information that they have.

Q. What information have you had?

A. Through communications from our customers and through information—that is, through advertisements that I have
83 seen in newspapers—that they were offered for sale.

Q. Who were the persons who were offering these teas in the market, as far as your knowledge went?

A. W. J. Gould & Co.

Q. Have you seen and read any correspondence in the regular course of your business from Allen Raymond, of Battle Creek, Michigan, in regard to the sale of "Tycoon chop tea" in that town by W. J. Gould & Co.?

A. Yes; I have seen some correspondence of that kind. I don't know that I could say just what it was.

Q. Please look at Exhibits L, M, and N and state whether you have ever seen them before.

A. Witness examines letters.

A. Yes; I have seen this correspondence.

Q. Where have you seen it before?

A. In our office.

Q. Are they letters that were received by you?

A. They were.

Q. Do you know by whom the red stamp was attached that is on them?

A. No; I cannot say that.

Q. Indicating the person that received the letters?

A. No, sir; I cannot say that. I receive a great many.

Q. Is that a stamp that is used in your business?

A. That is the stamp we use; yes.

Q. That is Corbin, May & Co.'s receipt stamp?

A. Yes, sir.

Q. I will ask you, Mr. May, what effect it would have upon your business in the sale of the "Tycoon" teas to have other and different tea than that manufactured by you sold in the market under the name of "Tycoon" or "Tycoon chop."

A. Well, in my opinion, it would be a very serious loss to us; a very serious detriment to our business to have other teas sold under that name to other parties.

Q. Do you know what action, if any, was taken by your firm upon the receipt of the letters which have been shown as Exhibits "L," "M," and "N?"

A. A correspondence was commenced, I believe, at once with the firm of W. J. Gould & Co.

Q. With what end in view, Mr. May?

A. With the end in view, of course, of stopping the sale of the tea by anybody except ourselves.

Q. How do consumers know this tea of yours which is sold as "Tycoon" tea?

A. By the name of "Tycoon."

Q. How is it described in the orders which you have from retail dealers throughout the country?

A. It was described as "Tycoon" tea.

Q. Through your knowledge, do the consumers and retail dealers identify it by any peculiar features of the label or by the name which has become attached to the article?

A. By the name, and by the label, too, I suppose.

Q. Is the word "Tycoon" in the label a prominent feature of it?

A. It is.

84 Q. Would a casual observer or purchaser of the article be readily deceived as to the character of the article they were purchasing if other teas than those of yours were sold under the name of "Tycoon" or "Tycoon chop?"

A. Do you mean from looking at the brand or from looking at the tea?

Q. If a person went into a retail store and asked for "Tycoon" tea and another and a different tea than this tea of yours were sold to him under the name of "Tycoon," could that person readily detect the fact that he had not purchased your tea?

A. I don't think ordinarily persons could.

Q. What was the object in view in the adoption of this word "Tycoon" upon these teas, if there was any object?

A. The object was to distinguish it from all other teas and to make it our own brand; our own trade-mark on our own teas.

Q. So far as you are advised, do you know whether persons buying teas from the retail dealers ask for "Tycoon" tea when they want your tea?

A. They do.

Q. Supposing a person went into a store to buy "Tycoon" tea and he was furnished with "Tycoon chop" tea, what would be the effect upon your trade?

A. Well, it would be a very serious loss to us, of course.

Q. Whether he got better or worse tea?

A. Yes.

Q. It would make no difference, would it?

A. It would make no difference, because the reputation of the tea had been gotten up by us.

Q. By what means was the reputation of this tea established by you—what means did you take for establishing the reputation of the tea?

A. Well, we advertised it very largely in different ways—through the newspapers and through circulars—to the trade.

Q. About how many thousand dollars do you estimate your expenses for advertising have been in this behalf since 1879?

A. Well, giving an estimate of it, I should think in the neighborhood of seven of eight thousand dollars.

Q. Have you any knowledge of any tea having been introduced into the market here in the Northwest and in the territory that you have named since you adopted this name of "Tycoon" and which has been sold under the name of "Tycoon" except that of W. J. Gould & Co.?

A. I do not.

Cross-examination by Mr. Hosmer:

Q. Mr. May, you say you have reason to believe that your teas are different from other teas. What is the reason for the faith that if [is] within you?

A. The reason is that my information more particularly comes from the makers of the tea, Mr. Morse and Mr. Smith. I have talked with Mr. Smith and with Mr. Morse, both, in regard to it, and
85 they say they are entirely different from any teas that they have ever made or known of.

Q. What is the distinction in coloring or in the manufacture?

A. The coloring is one thing; and, as I say, I am not an expert, and the rest of it I don't know; my information, as I say, comes from conversation.

Q. What is the superiority that you claim for the process of manufacture of your teas over and above other teas—that is to say, given the same leaf and given the process of manufacture which Messrs. Smith, Baker & Co. employ for you, and taking the same leaf and taking the ordinary course of manufacture, what is the superiority of your teas over the other teas?

A. I cannot answer that question.

Q. There are other uncolored teas in the market, are there not?

A. I don't know that there is; I don't know of any other except basket-fired tea; I presume that, probably, is uncolored tea. I don't know about that, even; as I say, I am not an expert in the business.

Q. I believe the distinctions in the teas are pan-fired and basket-fired teas, are they not?

A. Yes; there is that distinction; I know those two names.

Q. Would you be willing to testify that there are not here in the market other uncolored teas, not basket-fired teas, save your own?

A. No; I would not. That is a pretty large question.

Q. Are there not other teas of equally good quality? You would not be willing to swear that there are not other teas, pan-fired teas, which are not equally as good as yours?

A. That I don't know, because, as I say, I am not a tea expert; I could not answer that question.

Q. How long have you been in the tea business?

A. Well, we have been in the wholesale grocery business and tea business about 20 years, but Mr. Corbin has always been the tea man.

Q. Have you examined this Gould tea which was sold under the name of "Tycoon chop?"

A. No, sir.

Q. So you yourself could not testify as to the merits of the two teas?

A. No, sir.

Q. How many grades of "Tycoon" do you sell?

A. O, I don't know.

Q. This Exhibit D represents your line of uncolored pan-fired Tycoon teas, does it not?

A. Yes, that represents part of it; I presume we have got more that we do not quote here.

Q. They vary, I suppose, of course, as the prices are stated in their grade?

A. Yes, sir.

Q. But the variation, I understand, is in the leaf and not in the process of manufacture?

A. I suppose that is it.

Q. You say you have received information as to the sale of the "Tycoon chop" by W. J. Gould & Co. I presume the papers you saw the advertisement in were those you gave your counsel.
86 Were they not the Detroit Commercial and the Battle Creek Call?

A. Yes, sir.

Q. Those are the papers you gave your counsel?

A. Yes, sir.

Q. Also the other information you received is embraced in the conversation to which you have testified?

A. Yes.

Q. The question has been put to you by the counsel whether a customer might not be easily deceived. Of course, a customer might be deceived by a grocer who would impose the same colored tea upon him, but could he be deceived in a test of your teas? Suppose he got a pound of tea sold as "Tycoon" teas which was not your "Tycoon."

A. That I could not tell you.

Q. Then the burden of your complaint is not that an inferior tea would be palmed out as the "Tycoon" teas, but that, having established a favorable trade in teas known as "Tycoons," others might reap the benefit of your advertising?

A. Yes; that is one thing.

Q. I see in your bill of complaint here you charge the so-called "Tycoon chop" tea sold by Gould & Co. as being what you term a spurious article.

A. Yes.

Q. You haven't any particular knowledge with reference to that?

A. No; only that it is spurious in the fact that it has been sold under the "Tycoon" brand.

Q. When you say spurious, that is what you mean by the term spurious?

A. Yes; that it what I mean.

Q. And not as reflecting upon the quality of the tea sold?

A. I don't know anything about the quality of the teas; I am not an expert.

Q. You are not an expert tea man?

A. No; I am not.

Q. This firm of Smith, Baker & Co. are of Yokohama, San Francisco, and New York, I believe?

A. I don't know whether they have a house in San Francisco or not; they are in Yokohama and New York.

Q. They are a large concern, are they not?

A. Yes.

Q. You haven't any capital which is invested in any shape in Japan, have you. You give your orders right to Smith, Baker & Co.?

A. We send our money over there to them.

Q. You give your orders and they draw on you, don't they?

A. No; we give them a letter of credit over there; we give them the money.

Q. And entrust them to carry out your instructions?

A. Yes.

Q. And on receipt of that, I suppose, they would return you
87 so much goods, the goods you order?

A. Yes.

Q. You haven't any personal control of the preparation of the teas over there?

A. Well, we have only through our instructions, our instructions to them. They are our agents, of course, to manufacture the teas.

Q. The question as to the term "agents" is all I was dwelling upon. The capital invested there is their capital?

A. No; it is our capital, our money.

Q. What do you mean by that?

A. It is our money they buy tea with.

Q. Do you mean you send the remittance?

A. We send a letter of credit to them, which they sell; they sell that letter of credit to a bank. For instance, they have instructions to buy so much tea of a certain grade. We get from our bank here a letter of credit on London for ten thousand pounds or twenty thousand pounds, for which we have to deposit our money here, or collateral of some kind, to satisfy the bank that authorized Smith, Baker & Co. to make a draft on London for so much money. They make their draft and sell the draft and take the money in Mexican dollars. They pay for the tea to those Japanese in Mexican dollars. They sell the draft and get the money and pay for the tea.

Q. Then I say you have no capital employed there except the money you send in advance of each purchase.

A. Yes; the money is there because they get the money. It is invested because it is invested in that tea and invested in that letter of credit.

Q. It is invested in that tea and invested in that letter, but you yourself don't do any manufacturing; you yourself simply send your money to Smith, Baker & Co.?

A. Yes; our agents.

Q. And they return the teas?

A. Yes, sir.

Q. And Smith, Baker & Co. manufacture similarly for other houses, do they not?

A. They manufacture for other houses, but they do not manufacture similarly.

Q. They don't manufacture a similar grade of tea, or a similar process of manufacture they do not employ?

A. No.

Q. Do you know any San Francisco dealers? Do you know the firms of Coghill & Simon or H. Levy & Co.?

A. No; I do not.

Q. Do you know of the firm of Philips, Tabor & Co. or Tabor, Harker & Co.?

A. I do not.

Q. Do you know anything in reference to the use of the word "Tycoon" as a brand for tea prior to the use of it by the firm of Corbin & May or Ingraham, Corbin & May?

A. I do not.

Q. You never heard of it, did you?

A. I never heard of it.

88 Q. You were not familiar with the brands of teas which were sold in the San Francisco market and west of the Rocky Mountains?

A. No, sir.

Q. How did you happen to select the word "Tycoon?"

A. Well, I have forgotten, any further than I suppose we thought the "Tycoon" was the biggest fellow there was, and we calculated to have the best tea there was, and we were going to call it Tycoon.

Q. Which member of the firm was it that struck upon it?
A. I think it was Mr. Corbin.

The signature of the witness to the above deposition was waived by agreement of counsel.

And the said O. F. Hawley, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. Percy L. Shuman:

Q. What is your name, age, residence, and occupation?
A. My name is O. F. Hawley; age, 46 years; occupation, salesman for Corbin, May & Co.; residence, Englewood, Cook county, Illinois.
Q. How long have you been in the business, Mr. Hawley?
A. I have been with them sixteen years.
Q. In the course of your business have you been a travelling salesman?
A. Yes.
Q. In what part of the country?
A. Well, for the last four or five years up in Wisconsin more than any other section of the country.
Q. Have your travels extended to any degree in Michigan?
A. A very little; some in the northern part of Michigan, in the peninsula, and Cheboygan and other places.
Q. In the course of your business have you sold teas?
A. I have.
Q. What kind of teas?
A. Well, in Wisconsin it was mostly Japan teas, a few Oolongs.
Q. You have sold teas for Corbin, May & Co. and formerly for Ingraham, Corbin & May, have you not?
A. Yes, sir.
Q. They have a brand called "Tycoon" tea, several grades of that tea?
A. Yes, sir.
Q. I will ask you to state whether that tea is sold to retailers or by retailers to customers under any other name than "Tycoon" tea.
89 A. Well, not the pan-fired teas; they are all sold under the name of "Tycoon."
Q. That is all the teas they call "Tycoon," is it not?
A. Yes, sir.
Q. Have you any knowledge of the course of retail business in teas, as to how they are held for sale, in what shape and what condition they are held for sale, by retailers to customers?
A. A great many of them sell them out of the original packages, if I understand your question, and some of them do not; a large share of them do sell them out of the original packages.
Q. Do you know of a tea which has been sold in the market under the name of "Tycoon chop?"
A. I have heard of it.

Q. By whom was it sold?

A. I understood by Gould & Co., Detroit.

Q. I will ask you whether or not, in appearance, there is not a general likeness between all Japan teas to the casual observer.

A. Well, they have more the same appearance now in the last two or three years than they did formerly; they are not as high colored.

Q. Was there any difference a few years ago, perceptibly, between the teas known as "Tycoon" teas, sold by Ingraham, Corbin & May and Corbin, May & Co., and other Japan teas?

A. Well, at the time they first imported them there was a difference.

Q. What was the apparent difference?

A. In the color of the teas.

Q. Were their teas highly colored?

A. Not any that they have now of the "Tycoon" brand.

Q. Which were colored teas and how were they different from other teas?

A. All Japan teas were highly colored up to a few years ago—seven or eight years ago—all, pretty much, that were brought here.

Q. I understand you to say, then, that the "Tycoon" tea was not colored?

A. No, sir.

Q. Was that difference perceptible to the naked eye?

A. Yes, sir; it was.

Q. How long did that difference exist after 1879, say?

A. There is a difference now in some; there is some of them that is colored at the present time. There are some of them—I am not judge enough to tell whether they are colored or not.

Q. It would require an analytical examination, I presume?

A. Yes, sir.

Q. Have these teas of Corbin, May & Co., sold under the name of "Tycoon," been popular in the market?

A. They have.

Q. To what extent has the popularity been manifest?

A. We think—I do, at least—that they have been the most popular teas that have been sold—that is, judging by our customers, what they say to us about it.

Q. What do your customers say to you about it generally?

90 A. They say—nearly all of them—that they give better satisfaction than most teas that they get, and that they want to sell them in their town; perhaps a small town.

Q. Do you know whether these teas have been very largely advertised by Corbin, May & Co. throughout the country?

A. They have, quite largely.

Q. In what way?

A. Some through the papers—country papers—and by circulars a great deal, and they have advertised at county fairs to some extent.

Q. Would you know the facing of the "Tycoon" tea if you should see it?

A. Yes, sir.

Q. Look at Exhibit K and state what that is, if you please.

A. That is the "Tycoon" brand.

Q. Now, I will ask you, Mr. Hawley, if from your knowledge of the business you can say whether a package of tea containing a facing with the word "Tycoon" prominently printed upon it, in other respects resembling the ordinary tea chest or tea package, would have any signification on account of the use of the word "Tycoon."

A. Well, I think it would.

Q. What would be the signification in the trade, as you understand it, of the word "Tycoon" upon a chest of tea? What would the dealer or consumer be led to understand from that?

A. That they were buying Corbin, May & Co.'s "Tycoon" teas.

Q. Now, in the case of a facing which contained the name of some other person, some place upon the facing, but having the word "Tycoon" near the top, would there be any modification of the significance of that word?

A. I don't know, I am sure; there might. Of course, these consumers they become accustomed to using a "Tycoon" tea and inquire for that brand of tea.

Q. From their dealer?

A. Yes, sir.

Q. And, to your knowledge, is the facing of the tea inspected by the casual purchaser in order to identify the tea?

A. By the consumer?

Q. Yes.

A. I have known a good many instances of that kind where they go into the dealer's store and want "Tycoon" tea. Of course, in all cases they do not see the package, but inquire for the "Tycoon" tea.

Q. What would, from your knowledge of the business, be the effect on Corbin, May & Co.'s business in the sale of "Tycoon" tea to have a tea resembling it in outward appearance as to the package offered for sale under the name of "Tycoon" or "Tycoon chop" and sold?

A. Well, I should consider it would be an injury to their business.

Q. In what way do you arrive at that conclusion?

A. Well, it might in two ways. They might sell an inferior quality to that they had been selling for Corbin, May & Co. and injure their trade in that way, or other parties in the town might come in competition with parties that were selling Corbin,
91 May and Co.'s teas and claim that they had the same teas and injure their trade, and through them, of course, injure the trade of Corbin, May & Co.

Q. To your knowledge has that happened in the business so far?

A. No, sir; except what I have heard of this Michigan affair.

Q. What have you heard about the Michigan affair?

A. I have heard there was parties there engaged in selling "Tycoon tea"—"Tycoon chop."

Cross-examination by Mr. **Hosmer**:

Q. How long have you been in the tea business?

A. I have been with this firm for sixteen years.

Q. You are familiar with drawing tea, are you not—or a judge of the merits of tea?.

A. To a certain extent; I am not very expert in the business; I would not care to buy teas for the house.

Q. You can tell pretty near what tea is worth, can't you?

A. If I have a standard I can get pretty close, perhaps.

Q. Have you examined other uncolored teas?

A. I have drawn other teas with theirs.

Q. There are other uncolored teas, are there not, in the Chicago market?

A. There are those that they claim to be uncolored; they may be; I could not tell.

Q. How do they differ in quality from Corbin, May & Co.'s?

A. I cannot tell you that.

Q. Did you ever see any of this so-called "Tycoon chop" tea which it is alleged Gould sells?

A. No, sir; I think not; there might have been some there, but I don't know that there has in the house. I don't know whether there has or not. I never saw it, at least, and never drew it.

Q. You never saw it to know it?

A. No, sir.

Q. Whence comes the popularity of the "Tycoon" teas?

A. I think it is through their advertising and giving good teas for the money, and they claim, in the curing of them, it is different from other teas. I don't know how it is, and they have been quite largely advertised.

Q. I believe you say until recently there was comparatively little uncolored Japan tea?

A. Within the last five years; I don't know as it is as long as that.

Q. Are there not uncolored teas of other dealers of the same merit as the Corbin, May & Co. tea?

A. There might be; I could not answer as to that.

Q. So that if you took good uncolored Japan tea and sold it, it would with the same amount of advertising become as popular as "Tycoon," wouldn't it?

A. I could not say as to that; that is something I could not tell.

The signature of the witness to the above deposition was waived by agreement of counsel.

92 And the said **George J. Reed**, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. **Percy L. Shuman**:

Q. What is your name, age, residence, and occupation?

A. My name is George J. Reed. I am salesman for Corbin, May & Co.; residence, Chicago; age, 36 years.

Q. How long have you been in the grocery business?

A. I have been with Corbin, May & Co. nearly 12 years. It will be 12 years next April since I began with them.

Q. In the course of your business have you been a traveling salesman?

A. Yes, sir.

Q. Over what territory have your travels taken you?

A. The northern part of Illinois, lower Wisconsin, southern and central Minnesota, and the entire State of Iowa. I travelled in Michigan either three or four years ago. I will not be positive as to the date. I made one trip over there in the fall, in the month of October, and the next trip in the following March. I can give you the date exactly by referring to the day that the Alpena went down. I was at Niles, Michigan, on my October trip.

Q. In the course of your business as a travelling salesman have you sold teas?

A. I have.

Q. Did you ever sell teas under the name of "Tycoon" teas?

A. Well, I should judge about six years.

Q. To your knowledge have those teas been different from the ordinary Japan teas of commerce?

A. I think so; yes.

Q. You may state in what respect you consider them different.

A. At what period of time or all the time?

Q. Give your knowledge of the matter.

A. When we first bought the teas that we have called "Tycoon" teas they were different from the other Japan teas of commerce in the important particular that they were thoroughly and entirely free from all coloring matter; and while the generality of other Japan teas of commerce has been considerably changed from what they were when we first introduced these teas, I am still very decidedly of the opinion that they are not the same teas to-day in several essential particulars.

Q. Have "Tycoon" teas become popular in the market?

A. They have, sir.

Q. To what extent has their popularity been manifested—in what way; what has your experience been in regard to that?

A. They have become popular with retailers who have had them, and, of course, through them to their consumer customers.

Q. By what name are these teas generally known in the market?

A. As "Tycoon" teas.

Q. Have you ever known of their being sold under any other name?

A. No, sir; except, of course, the name of Japan tea.

93 Q. Do consumers who ask for them call them by the name of "Tycoon" teas, as well as the retail dealers?

A. Yes, sir.

Q. Would there be any effect upon the sales of Corbin, May & Co.'s "Tycoon" teas in the case of other teas of about the same general appearance, as to packages, facings, and labels, being sold under the name of "Tycoon?"

A. I think there would.

Q. What would that effect be?

A. Well, it would probably have the effect of decreasing the sale of Corbin, May & Co.'s teas. I should call it detrimental.

Q. Are these teas known in the trade distinctively by the color, shape, or general appearance of the label, or by the name of the teas?

A. Well, both. They are known, as a matter of course, to the trade, but wholesale and retail under the name of "Tycoon" teas, and a dealer seeing the facing, as a matter of course, would recognize it as a "Tycoon" tea.

Q. In the ordinary course of trade, would the consumer be able to tell, if he asked for "Tycoon" tea and was given by the dealer "Tycoon chop," or any other tea—would he be able to detect the difference?

A. That would depend largely upon circumstances, first as to the quality of the other tea that they might put out in place of the "Tycoon" and the utility of the "Tycoon" that they had been putting out.

Q. Would a casual observer or purchaser of tea be likely to buy "Tycoon chop" for "Tycoon" tea of the ordinary retail dealer, supposing both of them to be on sale?

A. The consumer?

Q. The consumer.

A. Well, I don't know that I can answer that question, because " never have seen but one small sample of so-called "Tycoon chop I tea. I can answer it in another way, however. In so-called sun-dried teas there is such a difference that the consumer would very easily detect the difference between that and the "Tycoon."

Q. From your knowledge of the business, do you think that it would be any damage to the business of Corbin, May & Co. to have any other tea similar in appearance introduced into the market and sold under the name of "Tycoon" or "Tycoon chop?"

A. Most decidedly.

Q. Have you any knowledge of any complaint having been made by retail dealers of the introduction into the market of a tea known as "Tycoon chop?"

A. I have such knowledge; yes, sir.

Q. From what is your knowledge derived?

A. It is derived from one or two letters from customers of ours—retail merchants.

Q. Where?

A. In Battle Creek, Michigan, and in Jackson, Michigan.

Q. Do you know anything about how the reputation of the "Tycoon" teas has been established?

A. Yes, sir.

Q. You may give your knowledge with regard to that matter.

94 A. At the time that Corbin, May & Co. first began to introduce these teas into this country we made a very strong

point on their purity, the absence of coloring matter or other foreign substances, and other modes of preparing them different from what ordinary Japan teas undergo; and, in addition to the statements that we made to the retail on these points, we set forth those statements very clearly and positively in the form of a circular, which we furnished the retailer with the teas, with his name and address printed on the bottom of them, for disposition to the consumer.

Q. Did you ever see any tea in the course of your business, other than of Ingraham, Corbin & May or Corbin, May & Co., with the word "Tycoon" on the facing?

A. No, sir; I never did.

Q. In any connection?

A. No, sir.

Q. Did you ever hear of any tea being sold in the Northwestern States here or any place east of the Rocky Mountains under the name of "Tycoon," except theirs?

A. Well, I have heard of "Tycoon chop" teas.

Q. I am not referring to this matter of Gould's; whether you ever heard of any other than this which we have under consideration in the course of your past experience in business?

A. No, sir; I never have.

Q. You are well acquainted, are you, with the different brands of tea that are bought and sold in the market generally?

A. I think so; yes, sir.

Q. You have seen a great many of the different facings, and would be likely to have known or heard of such tea sold as "Tycoon" if it had been done?

A. I think so—yes, sir.

Cross-examination by Mr. HOSMER:

Q. You have been 12 years with Corbin & May and Ingraham, Corbin & May?

A. Nearly 12 years; yes, sir.

Q. Had you any previous experience in the business?

A. Not, excepting in a retail way.

Q. You say at the time they began the "Tycoon" teas Japan teas in general were colored?

A. Yes, sir.

Q. There since have been uncolored Japan teas in the market, have there not?

A. So called; yes.

Q. What do you mean?

A. I claim they are not what they pretend to be in the strict sense of the word.

Q. That is to say, you mean in all the teas which are sold as uncolored teas there is some element of coloring?

A. I believe it; yes.

Q. How many uncolored teas did you ever examine with reference to that?

95 A. Well, I don't know that I can answer that very exactly. My experience since we first began to introduce uncolored teas into this country has been quite extensive, because I have had a very good tea territory, and I have made it my business to examine a great many different samples of tea—as many as I could—particularly those I came in direct competition with.

Q. You have come in direct competition, I suppose, with uncolored Japan teas?

A. So called; yes.

Q. You spoke of "sun-dried" tea. Is that synonymous with uncolored, or would it be; is popularly believed to be? What is sun-dried tea?

A. There is no such thing as sun-dried tea, as I understand it.

Q. Then all so-called sun-dried teas, as you understand it, are pan-fired teas?

A. Yes, sir.

Q. Then when a dealer purchases "Tycoon" tea he purchases a tea which to him is an uncolored tea?

A. Yes, sir.

Q. Is there any other particular quality denoted by the "Tycoon?"

A. Yes.

Q. What?

A. The preparation that it undergoes in process of curing.

Q. Of course, as far as that is concerned, the retail dealer is not cognizant of that process by which it is cured?

A. He may not be cognizant of that process, but he may be cognizant of the fact that having undergone that process it is a superior tea.

Q. What is the superiority of "Tycoon" tea over other so-called uncolored Japan teas?

A. One particular point, as I have stated it, is that they are absolutely pure and free from adulteration or coloring matter, and the other is in the process of firing and curing them, which I am not familiar with, as I never have seen it done.

Q. How do you detect the coloring matter in teas?

A. Partly by the look, partly by the taste.

Q. Are there not other teas that bear a general resemblance to the "Tycoon" teas?

A. To a casual observer, yes.

Q. You detect them from the look?

A. Yes, sir; I do.

Q. Have you ever drawn any of the so-called "Tycoon chop," a specimen of which I think Mr. Shuman brought to the firm of Corbin & May?

A. Yes, sir.

Q. What would you say with reference to the coloring matter in that?

A. My impression was when I drew the tea that it was colored and an entirely differently prepared tea from the tea that I drew it against.

Q. What was the difference in the quality? Was there a difference in the aroma, or what? What was the distinctive difference, aside from the fact that one was a colored tea and the other an uncolored tea?

A. Well, the "Tycoon" tea I drew it against was a very
96 smooth, rich tea, and the "Tycoon chop" was a rough, light-bodied tea, and, in comparison with the tea that I put against it, worth considerably less money.

Q. How much less? What grade did you draw it against?

A. I drew it against tea that we sell for thirty-two and thirty-three cents, and as against the value of that tea I placed the "Tycoon chop" tea from five to six cents less; in other words, I called it worth, in comparison with teas that we had in stock, from twenty-six to twenty-eight cents.

Q. You have got "Tycoon" of that grade, have you not?

A. Yes, sir.

Q. And you sell this with your other grades?

A. Yes, sir.

A. And frequently your customers buy two or three grades of "Tycoon?"

A. Yes, sir.

Q. How would this "Tycoon," then, injure the other "Tycoon" if your "Tycoon" tea is not a single-grade tea?

A. It would injure it in this particular, that, judging from the only sample that I have ever seen of it, it is an inferior tea.

A. That is your price-list, isn't it—your price-list of some of your teas? Handing to witness paper marked Exhibit "D," deposition of C. R. Corbin.

A. Yes, sir; that is a price-list issued by Corbin, May & Co.

Q. Don't you sell "Tycoons" at twenty-seven or twenty-eight cents?

A. Yes, sir.

Q. You sell "Tycoon" tea that is not siftings down as low as twenty-four cents?

A. We have one; yes.

Q. And they are all sold as "Tycoon?"

A. Yes, sir.

Q. Then isn't this tea equally as good as your "Tycoon" at 24 cents?

A. I think no-, sir.

Q. Then why do you say this would be worth twenty-seven-cent tea?

A. Placing its commercial value as it would go to other wholesale dealers in the trade.

Q. Then you could not undersell a twenty-four-cent tea, which is really of a superior quality, with a tea which would have to be purchased at twenty-seven or twenty-eight cents?

A. I think our 24-cent tea would give the consumer as good general satisfaction as the sample of tea I saw.

Q. Then there would be little difficulty in underselling it? Could not the consumer readily distinguish between "Tycoon chop" and "Tycoon?"

A. I have already answered that question. Some consumers would and some would not.

Mr. **Shuman**: It would be after they had drawn the tea and undertaken to consume it, wouldn't it?

A. Yes, sir.

Mr. **Hosmer**: Then consumers are attracted to your tea not by the quality of your tea, but they are attracted by the name?

97 A. They are attracted by the quality, and the name has always been synonymous with good quality. If they have had, in other words, a pound or half a pound or any quantity of "Tycoon" tea and have liked it they very naturally ask for "Tycoon" tea the second time.

Q. You are not familiar with the Michigan trade now, are you?

A. No, sir; not personally familiar with it.

Q. You say you never saw "Tycoon" tea other than the "Tycoon" tea of Corbin, May & Co. and this so-called "Tycoon chop?"

A. I never have, sir.

Q. Are you familiar with the teas of the Pacific coast?

A. No, sir; I am not.

Q. In the San Francisco market or that sold west of the Rocky Mountains?

A. No, sir.

Q. Didn't you ever see the word "Tycoon" applied to other than Japan tea?

A. I never did, sir.

Q. Were Corbin & May the first to import—I will not say the first to import—I think the first importation of Japan tea, as testified by Mr. Corbin, were almost all pure, but were they the first to begin the practice anew of importing pure teas?

A. I so understand it, sir.

Q. There are no teas sold, to your knowledge, excepting these "Tycoons" that, in your opinion, are unadulterated?

A. That is my opinion of it, sir.

Q. What is the method of adulteration, if you know?

A. Well, not being familiar with the different materials in coloring teas, I don't know that, from my own knowledge, I could say. I can say, however, what is popularly believed to be the ingredient used in so-called uncolored tea.

Q. What is it?

A. Black lead, mostly.

Q. What is the general color of the "Tycoon" tea?

A. Well, I don't know that I can describe the general color of it.

Q. Is it lighter or darker than uncolored tea?

A. It is a little lighter than so-called uncolored.

Q. Are there no other teas as light in general appearance as the "Tycoon?"

A. I have never seen any.

Q. Might not the difference in taste, which you say is adulteration, result from a difference in the manufacture as well as from a difference in the coloring?

A. Well, the difference in the preparation and the difference in the firing makes some difference, as a matter of course, in the flavor of the tea, but there is a peculiar flavor that is distinct with so-called uncolored teas which I have been led to believe by parties who are familiar with it comes from black lead that is used in the preparation.

Q. There are no means outside of a chemical analysis, are there, save in the testing of the tea and in the general appearance, of determing the difference and the amount of coloring matter?

98 A. Why, no; not to a certainty, that I know of; the test would indicate it, and, as a matter of course, to be positive about it, the test would either have to be made by a man who is familiar with preparing the teas or a chemical analysis.

Q. What is the object of coloring teas?

A. Well, so far as my knowledge goes—it is merely from information derived from other people who are familiar with the preparation of teas—from them I am led to believe that the object in coloring teas is to make an inferior grade of tea appear better than it really is.

Q. Do these colored teas appear to be better than "Tycoon?"

A. Some of them do in style.

Q. What do you mean by style?

A. The general appearance.

Q. The general appearance of the tea?

A. To a party not familiar with teas.

Q. As I am not a tea man, I don't know much about it; but just describe the superior appearance of these colored teas.

A. Well, they have more of a glossy, smooth appearance, and usually the coloring matter or other matter which may be put on these teas in process of firing tends to make the leaf roll up closer, so that it appears to be a higher grade of tea than it in reality is.

Q. The firm of Corbin, May & Co. have no salesmen travelling in any part of British North America, have they, either in Manitoba or Canada?

A. No traveling salesmen; no, sir.

Q. Mr. Corbin testified he didn't think he had filled any order from Manitoba for some time. That is as you understand it, is it not?

A. Well, sir, I, of course, being, as I am, about one-half of the time away from the store, I would not know whether they had filled any orders from there recently or not.

The signature of the witness to the above deposition was waived by agreement of counsel.

99 And the said James A. Doane, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. Percy L. Shuman:

Q. What is your name, age, residence, and occupation?

A. My name is James A. Doane; residence, Chicago; age, 56; I am salesman for Corbin, May & Co.

Q. In the course of your business have you been a travelling salesman for Corbin, May & Co.?

A. Yes, sir.

Q. In what territory have you traveled?

A. Mostly in Illinois.

Q. Have you sold "Tycoon" teas in Illinois?

A. I have.

Q. Are they a popular tea in the market?

A. Very much so.

Q. How has their reputation been established?

A. Their reputation has been established by Ingrahan, Corbin & May and Corbin, May & Co.

Q. What methods did they adopt for getting them into the market and establishing their reputation?

A. In sending out circulars and talking them up to the customers—in showing the difference between "Tycoons" and other Jap. teas.

Q. Is it generally understood in the market that "Tycoon" teas differ from other teas?

A. It is so understood.

Q. Do you know, from your knowledge of the business, that that is a fact?

A. I do.

Q. What is your reason for that belief?

A. My reason for that belief is that the trade we sell them to would take those and no other kind. It has increased their sales far beyond anything that they had before.

Q. You are acquainted with the ordinary tea of commerce, are you?

A. Yes, sir.

Q. And in the course of your business you have seen various brands of tea which have sold throughout the country?

A. I have.

Q. Have you ever seen any other teas than these of Corbin, May & Co. or Ingrahan, Corbin & May, as it used to be, which are known and sold under the name of "Tycoon?"

A. I never have.

Q. What effect would it have upon the teas, so far as you know, to offer in the trade for sale a Japan tea under the name of "Tycoon" or "Tycoon chop?"

A. By some other parties?

Q. By other people; yes.

A. It would lessen the sale of our teas very much. In the first place, they would think it was the same as Corbin, May & Co.

100 Q. It would not make any difference whether they were better teas or poorer, would it, in regard to the general effect upon the trade?

A. I think if the teas were poorer it would hurt the sale of our teas in a very great measure.

Q. What would be the effect, suppose the teas were better? Would it not also hurt the sale?

A. Of course it would; yes, sir;

Q. Have you ever sold these teas which Corbin, May & Co. call "Tycoons" under any other name?

A. I never have.

Q. Have you ever heard anybody inquire for them under any other name?

A. No, sir.

Q. Do the consumers know them by that name as well as the retail dealers?

A. They do.

Q. What do you say as to a likelihood of a casual buyer of tea being deceived into buying a spurious article as and for the tea of Corbin, May & Co. if it was sold under the same name?

A. I don't know that I have seen the "Tycoon chop" tea; I think that I have not.

Q. This tea of Corbin, May & Co. is known by its name, isn't it?

A. Known by its name.

Q. Rather than by the appearance of the tea or the appearance of the label on the chest, is it not?

A. It is known by the name, and the peculiarity of the tea is different from most any other chop tea—the tea itself.

Q. What would you say would be the effect upon the business to have another tea, a chop tea, sold in competition with the "Tycoon" tea under the same name?

A. It would hurt the business of the "Tycoon" tea.

Q. In what way would it hurt the business? How would it hurt the business?

A. If they would get up a so-called "Tycoon" tea that was sold by some other parties and not a "Tycoon" tea as I understand it, it would be an inferior article and would damage the sale of the "Tycoon" tea.

Q. In other words, there is only one kind of tea in the market that can properly be called "Tycoon" tea?

A. There is only one tea in the market that can be called "Tycoon" tea.

Q. Is that a fact generally known to retail dealers throughout the country, so far as your experience goes?

A. It is.

Q. Do you know how dealers in ordering tea denominate it, if they want this particular kind of tea?

A. They order "Tycoon" tea.

Q. And there is a way of designating what grade they want, is there?

A. By numbers; yes, sir.

101 Cross-examination by Mr. **Hosmer**:

—. You have never seen any of this "Tycoon chop," have you?

A. I think that I have not, sir.

Q. You say "Tycoon" teas differ from other teas. What is the essential difference from other Japan teas?

A. As I understand it, it is in the preparation of the tea—in the firing of it. It is strictly a pure tea—a natural leaf tea.

Q. In what way is that made manifest in the tea business—when you draw the tea?

A. When you draw the tea, as against other teas, it shows plainly.

Q. How?

A. In the taste of it. I don't know as I could describe it, but it is quite different.

Mr. SHUMAN: It establishes its own reputation on the palate, does it?

A. It establishes its own reputation on the palate.

Mr. HOSMER: Would a purchaser be deceived more than once by anything except the "Tycoon" tea?

A. The purchaser in buying a tea for "Tycoon" which was not, he would possibly not buy "Tycoon" afterwards, because he was getting an inferior article.

Q. If it was inferior a tea-drinker would be very apt to distinguish between an inferior article and a superior article, wouldn't he?

A. Yes.

Q. He would not buy but one package of the spurious tea; so it would not pay a man to introduce a spurious tea onto the market, would it, because he could not sustain it?

A. Take merchants as a class. A good many merchants, they like to make more money in profit on some articles than they can on others, and if they can buy a tea that is called "Tycoon" at a less price they will put it on their customers.

Q. How long have you been in the tea business?

A. I have been selling teas, more or less, for thirty years, I think.

Q. How do you detect adulteration?

A. The Japan teas that are colored, in my idea they are green, and the teas that are natural are of a brownish color.

Q. Are there not other Japan teas of a brownish color save and except "Tycoon" teas?

A. Yes; there are teas, "sun-dried teas," that resemble "Tycoon."

Q. They are a brownish color?

A. Yes, sir.

Q. So you cannot distinguish any adulteration, so far as color is concerned?

A. You can distinguish the adulteration. There is a tea that is faced with black lead that gives them a polished appearance entirely different from the tea that is not done so—from a pure tea.
That is another mode of adulteration, and that, as I think,
102 was done for the purpose of deceiving dealers into the belief
that it was the same kind of tea as they said that Corbin & May sold.

Q. Aren't there other teas in the Chicago market that are pure teas except the Tycoon tea?

A. Do you mean Japan teas?

Q. Yes. Do you mean to say they are the only uncolored tea there is here?

A. No; I could not say as to that, sir; I don't say that is the case. I haven't seen all the teas in Chicago.

Q. How long have you been with Corbin, May & Co.?

A. About 2 years.

The signature of the witness to the above deposition was waived by agreement of counsel.

By agreement of parties the further taking of testimony was adjourned to Saturday, February 6, 1886, at ten o'clock a. m.

SATURDAY, *February* 6, 1886.

Parties met pursuant to adjournment at ten a. m.

103 And the said OTIS A. POOLE, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct-examination by Mr. SHUMAN:

Q. Give your full name.

A. Otis A. Poole.

Q. Your residence.

A. Chicago.

Q. And your business.

A. I am a tea salesman.

Q. In what concern?

A. E. A. Shoyer & Co.

Q. How long have you been in that business?

A. In various capacities 10 years.

Q. Are you acquainted with the various brands of Japan teas which are sold in the market in the United States?

A. I am, as far as they are sold in the West here, and also in the East.

Q. Do you know a brand of tea called Tycoon?

A. Yes.

Q. Have you ever seen any of the labels or facings upon that tea?

A. Frequently.

Q. It is a well-known brand in the market?

A. Throughout the Northwest here, very many.

Q. For how long a time has it been known?

A. Well, that I can't say definitely, because it was a brand in the market before I was connected with the business except as a clerk.

Q. What reputation has this tea in the market?

A. My first recollection of the Tycoon tea as a brand was some years ago. The bulk of the teas, Japan teas, sold then were colored teas, whereas the original Japan teas first introduced into the country was a strictly uncolored tea, and Corbin rather revived interest in this uncolored tea, and advertised very largely as being free from the injurious matter used in coloring teas, and advertised it under this name of Tycoon tea, and it came gradually into use and is now a very large proportion of the Japan tea sold of that character—tea devoid of coloring. That was my first recollection of the Tycoon as applied to these teas.

Q. I will ask you if you have any knowledge of whether this brand of tea is generally respected by importers and large dealers of tea in the market.

A. I think it is by all the importers that I know. They would no more think of importing a tea under that brand than one importing house—Shoyer, for instance—would think of importing a tea under a brand that had been used by J. W. Doane to designate their teas.

Q. From your knowledge of the business what would be
104 the effect upon the trade of Corbin, May & Co. to have a tea
similar in appearance to theirs as to color and the condition of
packing and facing put upon the market under the name Tycoon,
whether alone or not in connection with any other word?

A. Well, I should think it would be an attempt to avail themselves of part of the reputation that was attached to the Tycoon teas.

Q. What effect, from your knowledge of the business, would that have upon the business of Corbin, May & Co.?

A. I don't know how it would work. In some localities where the trade was well acquainted with Corbin and the tea it might not affect it adversely. It might be to their advantage where they were well known, but where they were not well known I don't know what the effect would be.

Q. Suppose there is a retail dealer who is their customer in a town and he is selling their tea to a considerable extent, or, as you merchants say, running it, and another man in the grocery or tea business in the same town should advertise that he was now procuring and able to supply the demand for "Tycoon chop," what do you think would be the effect upon the sale of this Tycoon tea?

A. I am not familiar enough with the characteristics of the retail trade to say. I don't know how far it would influence the retail purchaser. I don't know what value the retail purchaser attaches to the terms, or whether he knows what it means or not.

Q. What is your understanding of the meaning of the word "chop?"

A. It means a little differently as applied to teas from different parts. Now, a chop of green teas comprises various kinds of teas, valued from—import value—from 75 cents down to 12 cents—four or five kinds of gunpowders, two or three imperials, four or five young hyson, etc. That is a chop of green tea, and any one of these kinds is a line.

Q. It is a commercial term, then, descriptive of a growth?

A. Yes, sir; as we speak of such and such a man's clip of wool. It is to denote a growth of tea or the product of some go-down—that is, the place where the tea is manufactured. Some chop or chops have a noted reputation and are known as a certain chop. The term is applied to green and black teas. I don't know that there is any chop or Japan teas with a known reputation like green teas. Now, when we speak of green teas we sometimes speak of Lee Yeking chop, which is a well-known chop to all importers of green tea, and there is a chop known as Feen Hing chop, but I don't know of chop as applied to Japan teas being used in the same way. Chop is a term that is applied to green teas. Chop means that it 105 comes from the same go-down every year—that is, it is the product of one manufacture of green teas, but Japan tea is fired differently. They don't come to us with chop names; but when we hear anything spoken of as Tycoon chop why we know that is the tea Corbin has been importing and selling.

Cross-examination by Mr. HOSMER:

Q. You say you have known Tycoon teas. What is the special characteristic of the Tycoon teas?

A. They are strictly uncolored Japan teas.

Q. There are other strictly uncolored Japan teas in the market, are there not?

A. Yes, sir.

Q. Strictly uncolored Japan teas?

A. Yes, sir.

Q. Just as strictly uncolored as Tycoon?

A. Yes, sir.

Q. And there is no more coloring matter employed in them?

A. None at all.

Q. There is no special excellence, is there, in the Tycoon teas over and above other uncolored Japan teas of the same grade?

A. Well, it would be a difficult matter for any expert to take half a dozen samples of any Tycoon tea and half a dozen samples of uncolored teas brought over by other importers mixed up together and drawn on a table. It would be difficult for an expert to pick Japan teas out from the other teas by any cup quality or characteristic of color.

Q. How many firms in Chicago handle strictly uncolored Japan teas?

A. You mean firms or importers?

Q. Firms or importers; I don't care which—importers.

A. I don't know; I don't suppose there is a dealer in Chicago or a tea importer but that handles the uncolored Japan teas. It is the backbone of the business.

Redirect examination by Mr. SHUMAN:

Q. Do you know of any other trade names which are used for Japan teas?

A. Yes, sir.

Q. Please tell us what some of them are?

A. The firm of E. B. Miller & Co. import a high grade of Japan tea which they call the rose tea, and I believe they claim that the name was copyrighted. I think they advertise that that is so. Whether they import that brand or not now I don't know. There are various brands of Mikado teas; that is one of E. B. Miller & Co.'s brands. They aim to keep a uniform quality of tea, turning it out under that name.

Q. And have established a trade in that line, under that name?

A. Established it as a proprietary brand.

The signature of the witness to above deposition was waived by agreement of counsel.

106 And the said JOEL C. WHITNEY, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. SHUMAN:

Q. What is your name, age, residence, and occupation?

A. Joel C. Whitney; residence, Chicago; occupation, tea-taster. I have charge of the tea department of J. W. Doane & Co.

Q. That is a large importing house of teas here?

A. Yes, sir.

Q. How long have you been in that business?

A. I have been here since November, 1873.

Q. Are you well acquainted with the various brands of Japan tea which are sold in the market of the United States?

A. I am.

Q. Do you know of a brand of tea called the Tycoon tea?

A. I do.

Q. By whom is that brand of tea imported and sold?

A. As far as I know, by Corbin, May & Co.

Q. Have you ever seen the brand or facing of Tycoon upon any other tea than that of Corbin, May & Co.?

A. Yes, sir.

Q. Is the brand Tycoon a well-known brand in the market?

A. It is; yes, sir.

Q. Do you know whether it has been largely sold through the Northwest and Western States?

A. Yes, sir; it has.

Q. Do you know whether that trade name or brand is recognized as the trade-mark of teas of Corbin, May & Co. by the importers and dealers in Chicago?

A. I think it is; yes, sir.

Q. There are other trade names which have been adopted by different firms for lines of tea, are there not?

A. There are.

Q. Will you please give the names of some of them?

A. The most prominent I know is the Mikado brand, or E. B. Miller & Co. I believe they have it copyrighted now; he told me so.

Q. What, from your knowledge of the business, would be the effect upon the sales and business of Corbin, May & Co. in Tycoon teas to have another firm introduce and sell in the market a tea resembling Tycoon generally under the name of Tycoon in connection with any other word?

A. I think in a new territory it might cut off part of their trade, but in a territory where they are well known the face marks, unless identical, would protect Corbin & Co. in their own.

Q. If there was a strong similarity existing between the facings and the prominent words upon the facings, wouldn't it have the effect of cutting into their business?

A. I think it would, to some extent.

Q. Isn't it a fact that importers and dealers in tea adopt these trade names for the purpose of establishing a particular line
107 and keep in their business together under a certain name, so that the public may know, and the retail dealer as well as the consumer may know, what teas they are getting by the name under which it is sold?

A. Yes, sir; that is the idea of a trade-mark.

Q. Has there been, to your knowledge, any understanding in the trade and commerce of teas that teas known as Tycoon were different from the ordinary teas of commerce?

A. Well, Tycoon teas, as we call them, we understand to be uncolored tea, or so-called sun-cured; it is known to the trade as sun-cured teas, uncolored.

Q. The name sun-cured implying that it is the natural leaf?

A. The natural leaf, uncolored.

Crosss-examination by Mr. HOSMER;

Q. Messrs. Corbin, May & Co., under the name Tycoon tea, are not the only importers of strictly uncolored teas, are they?

A. No, sir.

Q. There are plenty of other strictly uncolored teas in the Chicago market?

A. Lots of them.

Q. When you speak of uncolored tea it is a tea absolutely without coloring?

A. Yes, sir; that is so understood; but I suppose that it is not always so, but it means the tea, the natural leaf, as nearly as possible, without any artificial coloring.

Q. There is no special excellence in Tycoon, then, over other brands of tea that you can get in the market in point of quality, is there, or in point of color?

A. I think not. I think there are plenty of uncolored teas as good as Tycoon.

Q. And as free from coloring?

A. Yes, sir.

Q. I understood you to say that you did not think that they could be seriously injured except in new territory by any deception in the facings?

A. I don't know what effect that would have upon the trade. If another brand of tea came in marked Tycoon under the same facings or made by the same party—for instance, if half a dozen importers shipped all of the Tycoon brand to Ingraham, Corbin & May or Corbin, May & Company, their name would appear, as a rule; it generally does appear; I don't know that it does with Corbin's tea, but it generally appears as the packers of the tea, and if some one else should ship Tycoon teas under another name—that is, if some other packer should—and the face marks are different, an intelligent dealer could discover the difference.

Q. He would discover the difference?

A. He would discover the difference, probably.

Q. Have you seen the facings of Corbin, May & Company?

A. I have seen them; yes, sir.

108 Q. Is there any similarity to that (indicating and handing witness facing marked "Exhibit A")?

A. I think not, sir. The packer's name is generally placed upon the chest.

Solicitor for defendants offered in evidence facing hereto attached, marked Defendants' Exhibit A.

Mr. Shuman: It does not appear upon either of these?

A. It does not appear upon either one of these. I don't think that would cut any figure in this case.

Mr. Hosmer: Do you think that any intelligent retailer would be deceived by the facings used by W. J. Gould & Co.?

A. Well, I should say that an intelligent dealer could very readily tell the difference between these facings, and he ought to know their own teas.

Q. You say you are familiar with the trade. Are you familiar with the facings of San Francisco houses and the tea-dealers west of the Rocky Mountains?

A. No, sir; because I think the facings—as a rule, they change them every year. Importers, as a rule, in general, don't care so much about the mark. Of course, they have a mark that they import under for years, but they don't make any fight on it. We change the mark occasionally.

Q. Did you ever hear of the use of the word Tycoon other than by Corbin, May & Company?

A. Never, except by Corbin, May & Company.

Redirect examination by Mr. Shuman:

Q. Does your knowledge of the business extend to the retail business?

A. No, sir; it does not.

Q. Then you have testified merely as to the likelihood of a retail dealer who inspected the facings?

A. Yes, sir.

Q. Being likely to take one of these facings for the other?

A. Yes, sir.

Q. Is it not, in the trade, a fact that the most prominent word upon the facing as used there in both of those cases is the word Tycoon?

A. Yes, sir.

Q. And that that would be sufficient to designate the tea by?

A. Yes, sir; without seeing the facing.

Q. Without seeing the facing?

A. If a man should ask for Tycoon tea I should immediately know that he asked for Corbin, May & Company's tea.

Q. If he said Tycoon chop?

A. Well, I don't know that I can call anything in Japan tea a chop.

Q. The word chop, as principally used in connection with tea, is a mere commercial designation or synonym for chop or harvest or line?

A. Yes, sir. It is very rarely used, except in green and black teas. They don't speak of chops in Japan tea.

The signature of the witness to above deposition was waived by agreement of counsel.

109 And the said CHARLES A. FLANDERS, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. SHUMAN:

Q. What is your name, age, residence, and occupation?

A. Charles A. Flanders; residence, 679 Fullerton avenue, Chicago; occupation, tea salesman.

Q. How long have you been in the business?

A. Some 15 or 20 years.

Q. Are you acquainted with the various brands of Japan teas which are sold in the markets of the United States?

A. I am.

Q. Do you know the brand of tea called Tycoon tea?

A. I do.

Q. By whom is that brand of tea owned, imported, and sold?

A. Corbin, May & Co.

Q. How long have you known that brand in the market?

A. As near as I can recollect I think about 7 years.

Q. Have you traveled in connection with your business?

A. No, sir.

Q. Is that brand a well-known brand in the market?

A. It is.

Q. Have you ever heard of any other Japan tea being sold under the name of Tycoon or having Tycoon facing upon it?

A. No—that is, I would like to qualify that—prior to this instance.

Q. Now, will you look at Exhibit K and Exhibit A and state if you are familiar with that class of labels or facings?

A. In what way do you mean?

Q. How are they used? What are those papers?

A. They are tea facings—put on tea packages.

Q. They are facings for tea?

A. Yes, sir.

Q. What would you say is the most prominent word or designation of the tea upon both of these facings?

A. Tycoon.

Q. If a man were to ask you for Tycoon tea whose tea would you think he wanted?

A. Corbin, May & Co.

Q. If you heard that a man came in and asked for Tycoon chop what would you say—what tea would you think he was asking for?

A. Well, I should say that the man meant Tycoon tea.

Q. The brand Tycoon chop is not a well-known brand in the market, is it?

A. No, sir.

Q. Do you know what the signification of the word chop is?

A. It is a Chinese word.

Q. Has it been applied in any form to Japan teas, to your knowledge?

A. No, sir; it has not.

110 Q. What is its meaning as applied to the Chinese tea?

A. Literally translated, it means a brand or mark of tea.

Q. What, from your knowledge of the business, would you say would be the effect upon the trade of Corbin, May & Company to have a tea similar in appearance to theirs sold upon the market under the name of Tycoon by other parties?

A. I should think it would be somewhat of a detriment to them.

Q. Does your knowledge of the business extend to the retailers' trade with customers?

A. No, sir.

Q. Your testimony is confined, then, to the trade in package tea, with the facings and markings and everything of that kind in a wholesale way?

A. Yes, sir.

Q. How are teas generally sold in the market—by any peculiarities or distinguishing features of the labels themselves, or by the name?

A. From my understanding, I think by the name.

Q. I understand you to confine yourself to the wholesale trade in package tea. Now, how is the tea sold in the market?

A. By samples.

Q. By the name?

A. By the name of the tea. I would like, if I may, to qualify that. To a limited extent, of course, there are times when certain brands or marks of tea help the sale of it even in the wholesale trade.

Q. Then do I understand that the name of Tycoon, the reputation which it has attained, has helped the sale of these teas of Corbin, May & Company's in the market?

A. The reputation that name has attained I think has helped the sale of the teas.

Cross-examination by Mr. Hosmer:

Q. Do you think that a retail dealer would be likely to be deceived by the Tycoon chop facing which I now show you, being Exhibit——

A. If you mean whether he would be deceived by the difference in the style of facings, I should say he would not be deceived.

Q. He would not be deceived?

A. Not by his style of facing.

Q. In what manner would he be deceived, if at all?

A. By the name.

Q. Well, suppose the Tycoon chop tea to be the same as the Tycoon tea, of the same grade?

A. You must understand that literally Tycoon chop means Tycoon brand; that is the literal translation of Tycoon tea.

Q. Would there be any deception, then, practiced upon the dealer, or would a dealer be liable to be deceived, suppose the grade of tea to be the same?

A. Well, I don't know. If the grade of tea was the same I presume he might get the same quality of tea, whether it had one
facing on or the other; but, as teas are sold to dealers very
111 often simply upon their marks, I think he would be deceived in that way.

Q. Is a dealer any more liable to buy Tycoon tea than he is Mikado tea, which, as one of the other witnesses explained, is uncolored Japan, isn't it?

A. Some of them are. Some of the Mikado teas are uncolored and some are not.

Q. Then the only advantage which this has is that it is an uncolored Japan tea and it has a definite label?

A. I think I answered that question almost when Mr. Shuman asked me in regard to whether the Tycoon band, having attained a reputation, helped the sale of the tea. I think it has.

Q. You are not familiar with the name of facings employed in San Francisco and on the Pacific coast, are you?

A. Not particularly so.

Q. Did you ever hear of a Tycoon that was sold there by H. Levi & Co. or Cargill, Simon & Co., San Francisco?

A. No.

Q. Did you ever hear of a Tycoon sold by Tabor, Parker & Co., of San Francisco?

A. No.

Q. You don't know but what the word Tycoon has been used as applied to teas before being applied by Corbin, May & Company?

A. I don't know but it has.

Q. How long have you been in the business?

A. Some 20 years—15 or 20 years.

Q. And you have been located at this point a greater portion of the time?

A. No, sir.

Q. Where else?

A. New York and Japan.

The signature of the witness to above deposition was waived b agreement of counsel.

112 And the said W. I. HOWLAND, having been first sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. SHUMAN:

Q. What is your name, age, residence, and occupation?

A. My name is W. I. Howland; I am an importer of teas and coffees; age, thirty-eight; residence, Chicago.

Q. How long have you been in the tea business?

A. Sixteen years.

Q. How much of that time has been devoted to importing teas?

A. Eleven years.

Q. Are you acquainted with the various brands of Japan teas which have been imported and sold in the United States?

A. Yes; but more so with those imported in Chicago.

Q. And you are acquainted with the market of the Northwestern States, including Michigan and Illinois?

A. Yes; I may say so, very generally.

Q. Do you know a brand of tea called "Tycoon tea?"

A. I do; yes, sir.

Q. By whom has that brand of tea been imported and sold, if you know?

A. Corbin, May & Co.

Q. How many years have you known that tea?

A. Seven years.

Q. And, from your knowledge of the business and the trade, what would you say of that brand having become popular or otherwise in the market?

A. I should say that with the trade of Corbin & May it was exceedingly popular, extremely popular; very difficult to compete against.

Q. In what way are teas commonly sold in the market, Mr. Howland—by the appearance of the particular facings upon the tea, or by the name which becomes attached to the tea?

A. Each importer has his particular mark as his brand that he imports them by and sells them by.

Q. In case of the sale of the "Tycoon" tea what would you say would be the effect upon the trade of Corbin, May & Co. to have another tea of similar appearance as to the tea itself and the manner of packing and facing introduced into the market in competition with theirs under the same name or a name nearly indentical?

A. Extremely detrimental.

Q. You may explain in what way you think that would be detrimental, from your knowledge of the business as conducted by Corbin, May & Co.?

A. Corbin, May & Co. are a very old grocery house, an old firm of grocers. They are very well known all through the West and Northwest; in fact, in all the territory adjacent to Chicago. Seven years ago they induced a certain number of their friends, perhaps a small following at that time, to let them import their Japan teas

for them direct, charging them a reasonable percentage for
113 doing so. They started in in that line with a peculiar color and this particular brand of "Tycoon," and at once the tea became very popular in all the towns where they have any customers. I have never heard of their losing a customer of the "Tycoon" tea for this particular color and this particular mark of tea. I think it has been their aim, from what I have gathered from conversation with them and their salesmen and some of their buyers, to give one man in a town the mark, possibly two; not to exceed two in any one town. In that way that customer of theirs was able to control a very large following of the consumers to drink this particular style of tea. Let another brand with the same name be placed with a retailer on the opposite side of the street and it would mislead a great many of the first man's trade, and possibly the second man would be giving a very spurious tea, very much to the detriment of the reputation that the first had built up. And as a brand of tea it is similar to a brand of cotton goods or any other manufactured article; it gets a reputation, and if a spurious article with the same label is put out a large following of the consumers are deceived by it, and generally it sinks into nothing. In fact, in a very short space of time it would wipe out the reputation that it had taken years to build up by that particular mark or that particular brand. Furthermore, as I understand it, Corbin, May & Co. have always bought these teas at practically the same season of the year and practically at about the same conditions of the market. For instance, as is known in the importing trade, the spring-leaf teas, May and June teas—that is, the leaf that is picked in May and June—are the best drinking teas of the season. They have bought largely during those months, and were able to give their trade the "Tycoon" tea manufactured out of the very early leaf. Later on in the season the leaf is very much coarser and in a great many ways not as desirable to people accustomed to drink a very fine Japan tea. Another importer, under the same mark, could bring over a second-crop leaf, and a great majority of the trade, in fact the tea-drinking public, would not know until they had bought it, and then could not explain why it was not like what they had been in the habit of drinking. There would be a different flavor, and they would not know why it was a different flavor. The importer would know what the trouble was. And in a hundred ways almost a mark of tea can be upset by a second party interfering with it—a second importer.

Q. Then this name "Tycoon" has been recognized as a sort of guaranty of a good quality and uniform quality of goods?

A. I think so, largely.

Q. A tea which was put in competition with it in the same market, under the same or nearly the same name, even though it were, generally speaking, as good a tea, would have the same effect upon the trade as though it were inferior in quality of tea, so far as that could affect it, would it not?

A. No; not as much as though it was an inferior quality; but the Japan correspondent of Corbin, May & Co. would not put up a

"Tycoon" tea for any one else, any other correspondent. Therefore it would involve the other importer having his teas
114 labeled "Tycoon" through another correspondent, and there is no two houses—no two manufacturers in Japan—who fire their teas exactly the same. They would necessarily have different flavor here, although they might be of the same identical cost in Japan or in Chicago, laid down in Chicago; the flavor would be different.

Cross-examination by Mr. Hosmer:

Q. Do you mean to say there is any particular superiority in flavor in Corbin & May's teas over those of other importers of like grades?

A. No; I do not.

Q. Do Corbin, May & Co., in your opinion, hold their customers by virtue of their teas alone?

A. Their customers for all kinds of goods, do you mean, or customers for the "Tycoon" tea?

A. For the "Tycoon" tea—their tea customers—or do they hold their customers, as other firms do, by virtue of their course of dealing with them?

A. They hold their customers for teas very likely on the "Tycoon" tea.

Q. Then you think they could not sell their teas which they now call "Tycoon" under any other name?

A. No; I don't say that.

Q. To the same advantage?

A. Yes; to the same advantage, they could not.

Q. Why not?

A. To qualify that, they have been eight years building up this brand. Should they change they would have to go through largely the same guaranteeing process that they have gone through with this present mark.

Q. I don't understand that they have only one brand of "Tycoon" tea. I understand they apply it to a whole line; so that it is not one brand, is it?

A. No; it is the uniformity of the different grades.

Q. Then "Tycoon tea," to a man who buys a particular grade, does not mean the same thing as "Tycoon tea" to a man that buys another grade?

A. No; it means that at relatively the same price he gets the same quality.

Q. But the retail merchant who buys what I may designate as the first-class of the "Tycoon teas" might, at the same time, impose upon his customer at another time by selling a second grade of the same tea?

A. Certainly; but the retailer is supposed to have his trade just as much at heart as any other merchant, and if he has been selling a certain consumer a tea at 75 cents and the next time when the consumer comes for that same tea he gives him one that is thirty per cent. inferior at the same price, the chances are very largely that it will be returned to him.

115 Mr. **Shuman**: It would be cutting his own throat?

A. Yes, sir.

Mr. **Hosmer**: Then "Tycoon tea" means to the general public simply the special grade which they have been buying of their retail dealer?

A. Yes, sir.

Q. Then it has not to the general public the same significance that you might apply to some cottons—for instance, "Coates' thread?"

A. As I understand it, Coates has numbers 1, 2, and 3, does he not?

Q. That refers to the size of the thread and not to the character.

A. Perhaps it does refer to the size of the thread, but a great many manufactured articles of first and second. The "Tycoon," I think, of Corbin, May & Co. have I don't know how many grades; possibly about three, I should fancy, for the retail trade—for the trade that buy from them. I should think they would have something like three grades. They may have more than that. There are, of course, many more grades than that.

Q. There is their price-list (handing to witness paper marked "Exhibit D"). That does not include all of them?

A. Well, practically, a tea at 39 and a tea at 40 cents, why there is not a consumer in christendom that could tell the difference between those two teas; but in buying them in Japan the buyer there will pay 39 cents for one tea and 38 cents for another tea, bought on different days. Experts can see the difference, but when it comes to a cent a pound to the consumer it is difficult for them to tell. There is not one consumer in a thousand that could tell the difference, as experts grade them, one cent a pound apart. As I understand it, Corbin, May & Co.'s teas cost them so much, and they religiously put so much of their commissions on and sell them on that basis; put so much commissions on, and this, for instance, would indicate that they had paid two dollars less for one tea than — did for another tea, and they put so much a pound on and line it to the country on that basis, and the retailer pays his money and takes his choice.

Q. There is nothing to indicate to the consumer in the name "Tycoon tea" as to which grade it is?

A. They are all similarly fired; fired by the same man. For instance, in our business we have four houses in Japan that fire for us, and the teas are of a different flavor; they are of a little different color, and the general characteristics as you throw the four different fired teas into a pan, all teas coming by the same vessel, you can see the difference in the color; they are all different—different color, different style, different leaf, different identity.

Q. You carry uncolored teas, do you not?

A. We do.

Q. Strictly uncolored?

A. We do.

Q. Equally as well as Corbin, May & Co.?

A. We do.

116 Q. So that there cannot be any distinction in the "Tycoon" tea being strictly uncolored?

A. No, sir.

Q. And it cannot mean a strictly uncolored tea as contradistinguished from that of a great many other importers?

A. It has become that way.

Q. It is applied only to uncolored tea?

A. As they use it, it is applied only to uncolored tea, and all of Corbin & May's customers and the general importers and jobbers throughout the West that know Corbin, May & Co.'s teas, it is understood with them that "Tycoon" means an uncolored tea. They have never imported any colored or basket-fired teas, as the terms are used, with that mark on it.

Mr. SHUMAN: In other words, Mr. Howland, this word "Tycoon" is an arbitrary fancy name, which is used purely as a trade name?

A. Used as a trade name, as I understand it.

Mr. HOSMER: But there are other dealers, are there not, who have names applied to a strictly uncolored Japan tea—arbitrary names? Don't you yourself use an arbitrary name as applied to an uncolored tea?

A. We have dropped special names. We import on, as we call it, block marks, cargoe marks, and all our uncolored teas are imported under certain marks. For instance, we have one particular mark from one house in Japan, "S. C." in a diamond. All their uncoloreds are put up under that mark. From another correspondent we have "U" over "H" in a circle; that to us designates an uncolored tea, and to all our trade. Another mark we have is "P. F. H. 1–2;" that designates an uncolored tea. Formerly we had names for our teas. The "Garden tea" was one. All teas of a certain grade we sold as "Garden teas," and it was of a standard quality always. Another grade that we had was "Nevada;" that was a certain standard quality; and another grade was "Dakota." Those were practically the same grade. We sold them within the range of three or four cents, depending on the fluctuations of the market.

Q. Each of those block marks you have mentioned would denote to the retail merchant and the consumer a strictly uncolored tea?

A. No; it would not denote to the retailer.

Q. Why not?

A. It would denote to the jobber. We sell to the jobbers. We use the mark to designate them ourselves.

Q. To the jobber as well to the retailers?

A. The jobber sells to the retailers, and he shows his samples. The retailer asks for an uncolored tea; he does not ask for a "U over H." He asks for an uncolored tea.

Q. How do you know he asks the jobber for an uncolored tea, especially? Why not for one of the block marks? Suppose a retailer has been favorably impressed with your teas, in the sale of them, would he not call for those teas in the same way a customer of Corbin, May & Co.'s would call for Tycoon tea?

A. He would call —. I have not traveled to the retail trade for a good many years, but my understanding of it is that the salesman goes in and opens up business. He says, "Have you any more 'U over H,' number 10?" We will say for argument, and he

either has or has not, or if he has the trade is consummated,
117 and he either has or has not; if he has the trade is consummated, probably. If he has not he says, "No, but I have a duplicate 'U over H,' No. 20," something like that; that is the formula that he would go through.

Q. You don't suppose that the retail dealer who has been favorably impressed with your teas discards your teas each time he has to replenish his stock any more than he would discard "Tycoon tea?"

A. I do think he does, very largely.

Q. Why?

A. Because the salesman may be out of that particular mark and number, and he immediately goes to work to sell something else. Corbin, May & Co. keep a regular stock of these grades for their customers, and "Tycoon 4" means "Tycoon 4," or "Tycoon 27" takes the place of "Tycoon 4." They always have "Tycoon." I run out of my marks very frequently and have to substitute something else. A case in point on the marks came up with me in my business a week ago, which, if you will permit, I will explain to you. I have a mark of basket-fired tea that is very well known to the Japan trade. It is "B" in a diamond. I have had it for a number of years. I import no really poor teas under that mark; they are all very desirable and all fired by one house in Japan. This season I happen to have a number 25 of this mark, which is one of the finest teas I imported. Another jobber took a line of tea and sent it to the facers here and had it faced "Diamond B No. 25." It was a similar-colored tea, but it was not as good within twenty cents a pound. A customer that I had sold to came into competition with the other jobber, and they both had identically the same marks, one costing fifteen cents a pound more than the other was ready to sell for, and I was in trouble right off. Why did I sell him at 15 cents a pound more than the other man could sell for, which must have been twenty cents a pound difference? And it took me some time to explain, and I traced the matter up and found that the second party had had some teas faced here in this country "Diamond B 25"—an inferior tea.

Q. He had counterfeited your facing?

A. He had counterfeited my facing, which was very detrimental to me, and the man immediately apologized and said it was carelessness on his part, having them faced that way; he didn't care anything about the mark, but it happened he did have them faced that way, and he recognized that we had a brand that had been known as "Diamond B" for a long time, and that he should not do it again. It is considered, you may call it, rather dishonorable for one house—one importing house or jobbing house—to take the other's marks, copy other parties' marks, and it is not done on this market.

Q. It is not done anywhere by a reputable dealer?

A. No; it is not done by a reputable dealer.

The signature of the witness to the above deposition was waived by agreement of counsel.

118 And the said **WILLIAM MORGAN**, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. SHUMAN:

Q. What is your name, age, residence, and occupation?

A. William Morgan; I am of the firm of Morgan Brothers & Co., tea importers, 19 Wabash avenue, Chicago; age, thirty-eight years; residence, Chicago.

Q. How long have you been in the tea-dealing business?

A. I have been in the tea-dealing business probably about fifteen or eighteen years. I don't know just how long.

Q. Do you know a brand of tea in the market called "Tycoon tea?"

A. Yes, sir.

Q. By whom are those teas imported and sold in the market, if you know?

A. By Corbin, May & Co.

Q. How long have you known that brand in the market?

A. I could not say exactly how long. I have known it for a number of years.

Q. Is it a well-recognized brand in the market?

A. Yes, sir.

Q. Have you ever known of any other Japan teas having been sold in the United States under the name of "Tycoon" except those of Corbin, May & Co.?

A. No, sir; I have not

Q. From your knowledge of the business, is it the custom of importers and dealers to adopt certain names as indicative of the particular manufacture and importation of teas made by them and sold by them?

A. It is done so with importers, and, I think, to a very great extent amongst the jobbers. A great many houses and jobbers do; some, I suppose, do not.

Q. Are you acquainted with any of the trade names that are used on teas?

A. Yes, sir.

Q. What names do you know as having been used?

A. Well, one of our brands is an owl with "M. B. C." on it; then we have other brands, and then there are different block marks of different kinds.

Q. What would you say would be the effect upon your business to have another tea of similar appearance and similar facings sold in the same market with your teas containing the owl with "M. B. C." on it?

A. Perhaps I ought to qualify that to this extent, that we have only had this brand of ours. We have only been in business since the first of May. It would not have the same effect; our brand is not such a recognized brand as one which has been on the market so much longer. The house I worked for before, for instance, Carter,

Hawley & Co., they have a brand called "C. H." and an "M."
underneath, which stands, I suppose, for Carter, Hawley,
119 Morgan; and that brand is very well known, and it would make
a very great difference if anyone else had that brand in the United States, because it is recognized as being a superior article—that is, a peculiar brand and a peculiar class of teas under that brand.

Q. What would you say would be the effect upon Corbin, May & Co.'s business to have a Japan tea similar in appearance to theirs and with similar facings sold in the same market under the name of "Tycoon," either alone or in connection with some other words?

A. I should think it would be a very bad thing for them; very serious.

A. Is it commonly recognized in the market that Corbin, May & Co. have built up a large business in this "Tycoon" tea?

A. Yes, sir.

Q. In what territory has their business grown up, so far as you know?

A. Well, I suppose—I don't know—all the territory contiguous to Chicago, principally Michigan, I judge, because that is more a Japan market—very largely Michigan. I have never traveled for the retail trade, so I am not so thoroughly posted as a man who is traveling for the retail trade. We only job, and I don't know.

Q. In the trade—retailer too, in your knowledge of the business—are teas sold upon the appearance of the facings or upon the name?

A. On the name, I should say, more than the appearance of the facing.

Q. And if a man should order from the country "Tycoon chop" tea, what tea would you understand he wanted, from your knowledge of the business?

A. Corbin, May & Co.'s.

Q. Corbin, May & Co.'s "Tycoon" tea.

A. Yes, sir.

Q. Have you any knowledge of the manner in which tea facings are originated in order to have the tea faced before it is sent to the United States?

A. Generally speaking, the designs are by the parties ordering the teas. When the parties come through here from Japan or are going to Japan we usually give our orders how we want our teas branded before they come.

Q. That is the customary way of doing it, is it not?

A. Yes, sir.

Q. You recognize in trade and commerce that there there is a difference in the quality of teas brought about by the difference in the mode of manufacturing, do you not?

A. Yes, sir.

Q. As well as in the matter of selection of leaves and the season when the tea is purchased?

A. Yes, sir.

Cross-examination by Mr. **Hosmer**:

Q. A question has been put to you whether, if a customer in the country should ask for "Tycoon" tea—that in itself would not represent any special grade of the tea, would it?

120 A. Not necessarily so, as I understand it—that is, I understand these are different grades of the "Tycoon" tea. If a man called for a forty-cent "Tycoon" he would understand about what he was going to get, I should judge.

Q. If he called for sixteen-cent "Tycoon" he would get another article?

A. He would not get any.

Q. He would get a sifting of dust, wouldn't he?

A. We hardly call that tea, although it is tea, I suppose.

Q. You have given the instance of the "C H" with an "M" under it as a well-known grade of teas.

A. Excuse me; not a well-known grade—a well-known brand.

Q. Would that brand be injured by a tea which was equally as good. The only way you could injure the trade would be by taking an inferior tea and selling it as a "C H" over "M."

A. No; excuse me; there is a difference in the firing. It is impossible—it seems impossible. We have tried very often, but it seems impossible for any two firers or manipulators, whatever you like to call them, over in Japan to fire two teas identically alike. Smith, Baker & Co., who fired these Carter Hawley over Morgan, as we used to call them, and who fired these teas for Corbin—they are a different firing from Colgate and Baker's, or Merillian Hyman, or anyone else. There is a difference; you probably might not see the difference. People who are in the tea business recognize quite a difference in the character of the goods, and they are very popular goods on this market.

Q. No one would undertake to counterfeit the "C. H." over "M." label, unless he had an inferior tea, would he? There would be no profit or money in it.

A. O, yes; he might put up a tea. Carter Hawley might be making a profit on a high-priced tea, "C. H." and "M.," and the other man might put up just as good a tea under some other brand, and not be able to sell it nearly as readily as Carter & Hawley, because that is a recognized character of tea.

Q. That is an uncolored tea, is it not?

A. Yes, sir.

Q. Strictly uncolored?

A. Yes, sir.

Q. I understand Messrs. Corbin & May to say that they have the only strictly uncolored Japan teas in the Chicago market. You don't agree with them in that regard?

A. I do not.

Q. And there are various other different importers here in Chicago who carry a line of uncolored Japans equally with them?

A. Yes, sir.

Redirect examination by Mr. SHUMAN:

Q. Will you look at Exhibit "K" and Exhibit "A 1" and state from your knowledge of the business what is the distinctive word in those facings characterizing the facing?

A. The word "Tycoon."

121 Q. What do you understand to be the meaning of the word "chop" as used in tea trade?

A. A chop of tea usually designates an invoice or a chop of teas, grading from any price you like.

Q. It is a common commercial term?

A. Yes, sir.

Q. Do you recognize that there is such a similarity between those labels that a casual observer or purchaser of tea would be likely to take one tea for the other?

A. I should think they would not.

Q. What would be your reason for thinking they would not?

A. Because the "Tycoon" is put on a different style, and the color of the facing is different.

Q. That goes to the appearance of the label merely, does it not?

A. Yes, sir.

Q. But in the ordinary course of trade is attention paid to the mere coloring and shape of the facing?

A. I think not.

Q. The distinctive feature of the label is the word "Tycoon," is it not?

A. Yes, sir.

Recross examination by Mr. HOSMER:

Q. That would be to the retail consumer you speak of now, would it not?

A. I don't know that the consumer would see it at all.

Q. The consumers would not see it at all?

A. Not necessarily.

Q. But the retail dealer would not be liable to be deceived by such a facing as that of Gould's, would he?

A. I think he might.

Q. Do not the retail dealers examine the facings of their teas?

A. I think not. I should not think so, to any extent.

Q. A man who would buy "Tycoon" teas of Corbin & May, he would not buy "Tycoon" tea of somebody else, would he, without examining the facing to see if it was the same tea?

A. I don't know. I think it would depend very much on the man. Some men are more suspicious than others. If Mr. Corbin had sold a man only one bill of goods this man would not understand that Corbin controlled "Tycoon" tea, and someone else might sell him a "Tycoon chop" tea, and he might think it was just the same.

The signature of the witness to the above deposition was waived by agreement of counsel.

122 STATE OF ILLINOIS, }
Cook County, } ss:

I, John Gray, a notary public in and for the county of Cook and State of Illinois, do hereby certify that on the 5th and 6th days of February, A. D. 1886, pursuant to the notice hereto attached, the stipulation on file, and the order of January 25th, 1886, personally appeared before me, at the office of Mr. Percy L. Shuman, 12 & 13 Borden —, in the city of Chicago, Illinois, Calvin R. Corbin, Horatio N. May, O. F. Hawley, George J. Reed, James A. Doane, Otis A. Poole, Joel C. Whitney, Charles A. Flanders, W. I. Howland, and William Morgan, witnesses to testify on the behalf of the complainants in a certain cause now pending in the circuit court of the United States in and for the eastern district of Michigan, wherein Calvin R. Corbin and Horatio N. May are complainants and Walter J. Gould and others are defendants; that there were present at the taking of said depositions Mr. Percy L. Shuman, representing the complainants, and Mr. George S. Hosmer, of Dickinson, Thurber & Hosmer, solicitors for defendants.

And I do hereby further certify that the aforesaid witnesses were first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as they should be interrogated; that the testimony of said witnesses was reduced by me to writing, and the signatures of said witnesses thereto waived by agreement of counsel.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 9th day of February, A. D. 1886.

[SEAL.] JOHN GRAY,
Notary Public.

Notary fees, $71.00, paid by complainants.

JOHN GRAY,
Notary Public.

123 EXHIBIT A.

Deposition of C. R. Corbin.

Pan-fired uncolored Japan teas.

Facts that should be carefully considered.

The entire exported product of Japan tea, at present amounting to 40,000,000 pounds annually, is consumed by Americans. Its popularity originated in the well-advertised fact of its purity at the time of its introduction—twenty years ago—which gave it the preference over China green teas that were then most in use and generally considered injurious on account of artificial color. It is rather singular, but nevertheless true, that a tea so generally in use, which rapidly grew into favor for the reason of its being a pure, natural-leaf tea, should gradually become the most adulterated of any in use and still retain so strong a hold upon the public. Latterly, however, some consumers, who were aware of the change in its character, have demanded a pure Japan tea, and the so-called basket-fired tea has been reluctantly accepted, it being the only uncolored Japan tea imported of late years until the recent introduction of uncolored pan-fired Japan.

The pan-fired uncolored is the only natural-leaf Japan tea in the market. It is prepared in the same manner as when first introduced and so favorably received; it is also cured by the same process as the ordinary Japan, except the coloring, which consists of Prussian blue, gypsum, "Dutch pink," soapstone, clay, etc., a compound not altogether desirable for a steady beverage.

Basket-fired, though uncolored, is not a natural-leaf tea and does not give general satisfaction. It is so called from the fact of its being dried or "fired" in a "basket" or perforated pan over a slow and sometimes smoky fire after it has been through a fermenting process similar to the preparation of Oolong or "black tea." The leaf is larger, usually coarser, frequently has a smoky and sometimes a raw or grassy flavor.

The object in coloring Japan tea is to give uniformity of color to leaves which are either poor tea leaves or wholly foreign, as of willow, which the Japanese call "lie tea;" to deceive the eye and so afford an opportunity for salesmen to overstate true value; to make weight, and, in short, to cover fraud in general. No native of Japan can be induced to use a colored tea.

Pan-fired natural-leaf Japan tea is of a brownish color, and frequently discloses some yellowish leaves, but the I., C. & M. "Tycoon" teas are selected and prepared with special reference to the wants and interests of consumers, having advantages in quality as well as in purity.

At a time when food adulteration is so alarmingly prevalent it is
the manifest duty of honorable dealers to exercise great care
124 in serving patrons. The pan-fired uncolored Japan tea is
kept in stock and confidently recommended by the undersigned as the purest and best Japan tea ever offered.

SOUTHGATE BROTHERS,
Rockford, Ill.

125 What the United States consul at Hiogo and the Hiogo News say about adulterated Japan teas.

General Stahel, United States consul at Hiogo, Japan, in his latest report says:

"I avail myself of this occasion to call the attention of the Department and of American consumers of tea to the fact that most of the teas shipped from Japan to the United States are now artificially colored. Formerly this was not the case. In the early years of the trade, say from 1859 to 1869, the manipulation of Japan teas by the exporter was confined to a simple refiring, which was necessary in order to cure the leaf sufficiently to enable it to endure transport through the tropics and to retain its qualities while in store. The leaf was improved by this process, and Japan teas were then shipped in their natural condition and honestly called "uncolored." About 1870, however, consumers (?) began to call for a higher color than any natural process would furnish, and although this demand was long resisted by the shippers in Japan and at some loss to themselves, yet ultimately it prevailed, and for some years past artificial coloring has been the rule, so that Japan teas, which are naturally of a blackish or brownish-green color, are now made to resemble the bluish-gray or grayish-blue teas shipped from China as "green teas." The materials used to produce these shades are not very pernicious (?), being nothing worse, as a general rule, than indigo and gypsum, but they certainly add nothing to the value of tea leaves for drinking purposes. There is, therefore, nothing to be said in favor of the practice, except that dealers in America prefer teas of that description. Their doing so is probably explained by the fact that in teas so colored coarse leaves may pass detection, and this is no doubt the cause of the gradual deterioration of the quality of the Japan teas exported to America during recent years. The adulteration will probably continue as long as consumers in America buy teas only according to the appearance of the leaf, regardless of its drawing qualities, and as long as the simple secret of making the infusion is so little understood in our country."

Quoting the above report of General Stahel, the Hiogo News, of July 20th, 1881, says:

"We are glad to be able to quote an authoritative opinion on the purity of teas prepared in Kobe, given by a disinterested person possessing every means of ascertaining the exact facts. It is evident that shippers have no object in doctoring up teas beyond obedience to the insistence of customers at the other side of the Pacific, but there is doctoring and doctoring. Analysis of eleven samples of Japan teas made last year in San Francisco showed that four contained Prussian blue—ferro-cyanide of iron—five plumbago—black lead—and the remaining two simply indigo and gypsum. This bears out General Stahel's remark on the adulterants used here—Kobe—supposing that the two out of eleven comparatively innocuous samples were, from teas produced in this district. At all events, American (?) consumers are alone to blame for any admixtures, the result of their demands for teas of a particular and unnatural color,
126 and they also have the satisfaction of knowing that the remedy lies entirely in their own hands."

Comments.—As the exclusive importers of natural-leaf Japan teas for the past three years, and also having been familiar with the business as importers and jobbers of Japan teas since their introduction into this country, we desire to state our belief that General Stahel in the foregoing has made a fair report as was consistent with his duty to the commercial interests of the country he represents; but he errs in placing the responsibility of adulterating Japan teas upon consumers, for neither consumers nor retailers were in fault. Consumers never called for colored Japan tea; neither did retailers ask for them, but both parties were imposed upon by shippers, importers, jobbers, and their salesmen by the gradual and, at first, almost imperceptible change to colored teas, which, however, increased until, in some instances, whole families were made sick with the poison contained in the so-called dust or siftings* from such teas. Whether this a serious matter or not Japan-tea drinkers must decide. We think it is, and have excluded the colored imposition from our business, and therefore press it upon your attention.

I., C. & M.

* Siftings from uncolored teas are pure, wholesome, and economical. (Over.)

127 EXHIBIT B.

Deposition of C. R. Corbin.

PURE TEAS.

PAN-FIRED

Uncolored

JAPAN TEA.

No poisonous mixture for false coloring—Prussian blue, clay, indigo, black lead, etc.

Trade Mark.

THE
TYCOON
TEA.

I. C. & M.

C.

JAPAN TEA.

PURE

Natural-leaf

JAPAN TEA.

As it was when introduced, 20 years ago, and its purity gave it popularity.

Facts to be Considered.

The entire exported product of Japan tea, at present amounting to 40,000,000 pounds annually, is consumed by Americans. Its popularity originated in the well-advertised fact of its purity at the time of its introduction, twenty years ago, which gave it the preference over China green teas that were then most in use and generally considered injurious on account of artificial color. It is rather singular, but nevertheless true, that a tea so generally in use, which rapidly grew into favor for the reason of its being a pure, natural-leaf tea, should gradually become the most adulterated of any in use and still retain so strong a hold upon the public. Latterly, however, some consumers, who were aware of the change in its character, have demanded a pure Japan tea, and the so-called basket-fired tea has been reluctantly accepted, it being the only uncolored Japan tea imported of late years until the recent introduction of uncolored pan-fired Japan.

The pan-fired uncolored is the only natural-leaf Japan tea in the market. It is prepared in the same manner as when first introduced and so favorably received. It is also cured by the same process as the ordinary Japan, except the coloring, which consists of Prussian blue, gypsum, "Dutch pink," soapstone, clay, etc., a compound not altogether desirable for a steady beverage.

Basket-fired, though uncolored, is not a natural-leaf tea and does not give general satisfaction. It is so called from the fact of its being dried or "fired" in a "basket" or perforated pan over a slow and sometimes smoky fire after it has been through a fermenting process similar to the preparation of Oolong or "black" tea. The leaf is larger, usually coarser, frequently has a smoky and sometimes a raw or grassy flavor.

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Pan-fired natural-leaf Japan tea is of a brownish color, and frequently discloses some yellowish leaves, but the I., C. & M. "Tycoon" teas are selected and prepared with special reference to the wants and interests of consumers, having advantages in quality as well as in purity.

At a time when food adulteration is so alarmingly prevalent it is the manifest duty of honorable dealers to exercise great care
128 in serving patrons. The pan-fired uncolored Japan tea is kept in stock and confidently recommended by the undersigned as the purest and best Japan tea ever offered.

J. HENRY ALLEN,
313 *W. State St., Rockford, Ill.*

I am buying my teas of the original importers of pan-fired uncolored Japan teas, and will give you the best tea in Rockford for the money.

N. B.—Worthless imitations and poor qualities of "basket-fired" are frequently sold as "the same tea." "The Tycoon tea" is the original importer's brand and is reliable in all respects.

129 What the United States consul at Hiogo and the Hiogo News say about adulterated Japan teas.

General Stahel, United States consul at Hiogo, Japan, in his latest report says:

"I avail myself of this occasion to call the attention of the Department and of American consumers of tea to the fact that most of the teas shipped from Japan to the United States are now artificially colored. Formerly this was not the case. In the early years of the trade—say from 1859 to 1869—the manipulation of Japan teas by the exporter was confined to a simple refiring, which was necessary in order to cure the leaf sufficiently to enable it to endure transport through the tropics and to retain its qualities while in store. The leaf was improved by this process, and Japan teas were then shipped in their natural condition and honestly called "uncolored." About 1870, however, consumers (?) began to call for a higher color than any natural process would furnish, and although this demand was long resisted by the shippers in Japan and at some loss to themselves, yet ultimately it prevailed, and for some years past artificial coloring has been the rule, so that Japan teas, which are naturally of a blackish or brownish-green color, are now made to resemble the bluish-gray or grayish-blue teas shipped from China as "green teas." The materials used to produce these shades are not very pernicious, (?) being nothing worse, as a general rule, than indigo and gypsum, but they certainly add nothing to the value of tea leaves for drinking purposes. There is, therefore, nothing to be said in favor of the practice, except that dealers in America prefer teas of that description. Their doing so is probably explained by the fact that in teas so colored coarse leaves may pass detection, and this is no doubt the cause of the gradual deterioration of the quality of the Japan teas exported to America during recent years. The adulteration will probably continue as long as consumers in America buy teas only according to the appearance of the leaf, regardless of its drawing qualities, and as long as the simple secret of making the infusion is so little understood in our country."

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> 130 and they also have the satisfaction of knowing that the remedy lies entirely in their own hands."

Comments.—As the exclusive importers of natural-leaf Japan teas for the past three years, and also having been familiar with the business as importers and jobbers of Japan teas since their introduction into this country, we desire to state our belief that General Stahel in the foregoing has made as fair a report as was consistent with his duty to the commercial interests of the country he represents; but he errs in placing the responsibility of adulterating Japan teas upon consumers, for neither consumers nor retailers were in fault. Consumers never called for colored Japan teas, neither did retailers ask for them, but both parties were imposed upon by shippers, importers, jobbers, and their salesmen by the gradual and, at first, almost imperceptible change to colored teas, which, however, increased until in some instances whole familes were made sick with the poison contained in the so-called dust or siftings from such teas. Whether this is a serious matter or not Japan tea drinkers must decide. We think it is, and have excluded the colored imposition from our business, and therefore press it upon your attention.

I., C. & M.

Siftings from uncolored teas are pure, wholesome, and economical. (Over).

131 EXHIBIT C.

Deposition of C. R. Corbin.

PURE TEAS.

PAN-FIRED

Uncolored

JAPAN TEA.

No poisonous mixture for false coloring—Prussian blue, clay, indigo, black lead, etc.

Trade Mark.

THE

TYCOON

TEA.

I. C. & M.

C.

JAPAN TEA.

PURE

Natural-leaf

JAPAN TEA.

As it was when introduced here, in 1860, and its purity gave it popularity.

Adulterated Teas.

That a large percentage of the entire importation of Japan tea is adulterated is a fact well understood by tea importers. Very little, if any, of that which is known as "basket-fired" and "sun-dried" escapes "manipulation" and "doctoring" in the process of refiring previous to packing at the Japan outports. This operation is called 'facing" the object being to improve the appearance by giving greater uniformity of color to a variety of shades of leaves and imparting more gloss than if prepared as a natural tea, a trick or deception to increase the salable quality, making poor grades appear good.

Coloring was formerly carried to great excess, became very apparent to consumers and retailers, who protested against it, influencing a change from the conspicuous gray-green to a modified shade produced by a compound of which the chief substance is plumbago—black lead. The desired smoothness or "finish" is thereby attained, but the deceptive features continue to exist and the objectionable poisonous substances remain. Some of the basket-fired has been excessively so treated, and latterly nearly all is more or less "touched up" with black lead, etc., and "sun-dried," which is a clap-trap term, for tea is not and cannot be adequately cured by the sun; is usually subjected to the black-lead process, and claimed to be the same as the Tycoon brand.

The exclusive importers of the "Tycoon tea" guarantee it an absolutely pure tea; also it is selected from the districts which produce the finest and best teas, early spring growth, and it is the best Japan tea imported in all respects.

The necessary drawing process.—Have a dry, thoroughly "sweet" teapot, put the tea into it dry, and then pour the required quantity, for the tea used, of an entire fresh supply of positively boiling—not simmering—water into the teapot. Be sure that the water boils; close the teapot, and no further heat is required. In five or seven minutes you have as perfect a cup of tea as the tea used will make. All other processes are mistakes. Your supply of tea must be kept in a tightly closed can, jar, or box.

The undersigned, having direct arrangements with the importers for a constant supply, confidently recommend this pan-fired, 132 uncolored or natural-leaf tea as the best and purest Japan tea ever offered.

PETERSBURG COAL CO.,
Petersburg, Ill.

On right-hand margin: The prevalence of adulterated food prompts honorable dealers to exercise great care in serving their patrons.

On left-hand margin: This is not an exaggerated, sensational advertisement, but a correct statement of incontrovertible facts.

133 What the United States consul at Hiogo and the Hiogo News say about adulterated Japan teas.

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result of their demands for teas of a particular and unnatural
134 color, and they *have the* also have the satisfaction of knowing
that the remedy lies entirely in their own hands."

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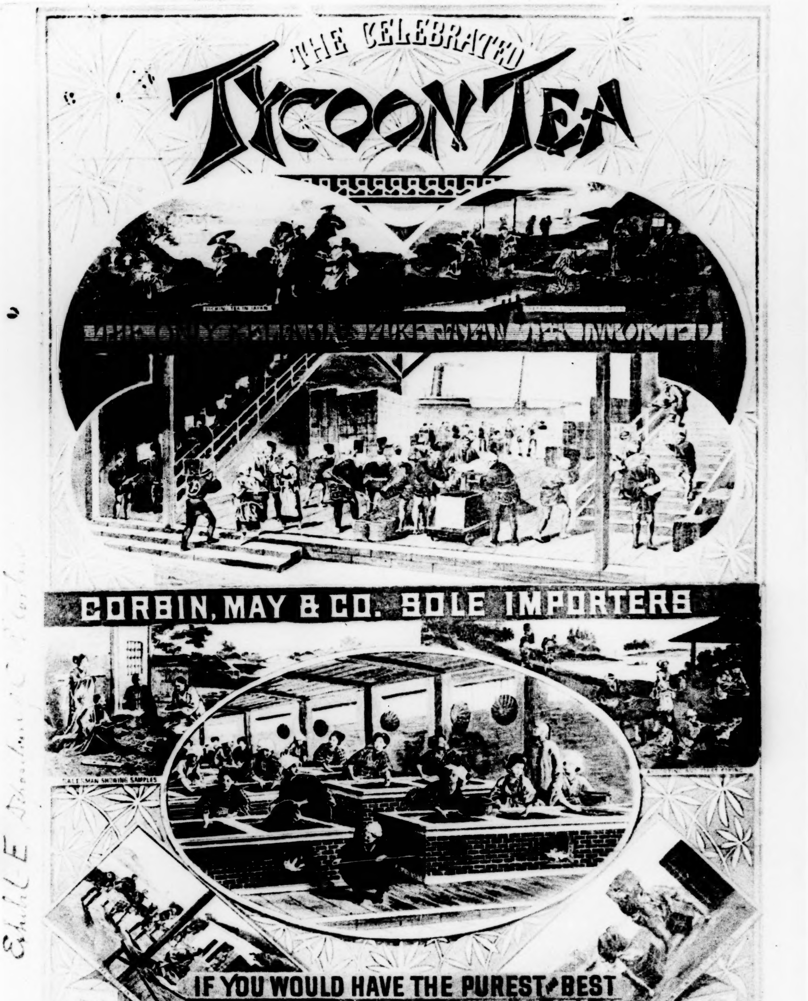
I., C. & M.

Siftings from uncolored teas are pure, wholesome, and economical. (Over.)

((



THE CELEBRATED

TYCOON TEA

PICKING TEA IN JAPAN

THE ONLY [illegible] PURE JAPAN TEA IMPORTED

CORBIN, MAY & CO. SOLE IMPORTERS

SALESMAN SHOWING SAMPLES

IF YOU WOULD HAVE THE PUREST & BEST

USE NONE BUT

TYCOON TEA

Brand Studio

EXTRA FINISH

Ed. H. E. Bradbury & Parker

TRADE MARK
THE
TYCOON
TEA

Chicago, ______________________ *188*

Dear Sir:

Our Mr. ______________________________________ *will call*

on you about ______________________

Yours truly,

CORBIN, MAY & CO.

Calvin R. Corbin *et al.*
vs.
Walter J. Gould *et al.*

No. 131.
P. 136½.

Are You Insured? **INVOICE.**

THE TRADE MARK TYCOON TEA

Claims for damage or allowance must be made within 5 days after receipt of goods.

....

....

CORBIN, MAY & CO.,

C. R. Corbin.
H. N. May. } **WHOLESALE GROCERS,**

—AND—

TEA-IMPORTERS,

87 and 89 Michigan Avenue.

Book........................

Folio........................

☞Correspondence referring to Bills, give Book and Folio.

Due and payable in Chicago. Express Charges and Exchange must be prepaid.

Chicago,..188

TIME—4 Months.

DISCOUNTS.—When this bill is paid, IF at maturity (or before,) NOT OTHERWISE, there will be deductions as follows:

On TEAS—3 per cent.. $ ....

in addition to above, if it is desired to pay bills before maturity, a further discount at the rate of One per cent. per month for unexpired time will be allowed, or if paid WITHIN seven days from date, discount for full time will be allowed.

Calvin R. Corbin *et al.*
vs.
Walter J. Gould *et al.* } No. 131. P. 137.

CORBIN, MAY & CO.,
TEA IMPORTERS AND GROCERS,
87 & 89 Michigan Ave.

$ ____________ TRADE MARK THE TYCOON TEA Chicago, ____________ 1886.

Received of ____

____ 100 Dollars

____

CORBIN, MAY & CO.

Special Dis ____________

Cash " ____________

Per ______________________________

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*

No. 131.
P. 137½.

TRADE MARK
THE
TYCOON
TEA

....188......

CORBIN, MAY & CO.

CHICAGO:

Ship to ....

Address ....

Via ....

IMPORTERS OF THE TYCOON UNCOLORED JAPAN TEA, AND SOLE AGENTS FOR CLEAR QUILL SPICES,
BAKING POWDER, EXTRACTS, LYE AND POTASH.

CALVIN R. CORBIN *et al.* } No. 131.
vs.
WALTER J. GOULD *et al.* } P. 138.

(Here follows copy of Commercial Bulletin; also photograph marked Exhibit E.)

135 EXHIBIT F.

Deposition C. R. Corbin.

(See inserts.)

(Here follows exhibits marked pp. 136 to 139.)

140 EXHIBIT G.

Deposition of C. R. Corbin.

COLUMBUS, WIS., 2, 3, '86.

GENTS: Please send 1 chest Tycoon tea, best you can, at 34 to 35 cts.; 1 doz. Columbia yeast.

Yours, H. LOOMIS.

On the reverse side: Postmarked Columbus, Wis., Feb. 3. Mess. Corbin, May & Co., Chicago, Ill.

Geo. K. Whitney, manufacturer of and dealer in rye, buckwheat, and graham flour, corn-meal, and feed, and dealer in general merchandise.

MERRILLAN, WIS., *Feb'y* 3, 1886.

Corbin, May & Co., Chicago.

SIRS: Please send via Elroy 30-lb. case Adams' Excelsior smo. tob., ¼'s and ½'s; 50 lb. dry goods wrap. paper, 24 x 36, D. D. brown; 40 lb. tea wrap. paper, 18 x 24, D. crown; 50 lb. evap. New York ring cut apples; 2½ chests Tycoon tea, No. 146; 1 case Babbitt's 1776; 5 lb. fancy Penang nutmegs; 1 bbl. back pork, new; 1 bbl. XXX oyster crackers.

Yours, &c., GEO. K. WHITNEY.

E. F. Sherman. C. F. Sherman.

Sherman Brothers, general merchandise.

NEW HAMPTON, IOWA, *Feb.* 1, 1886.

Corbin, May & Co., Chicago, Ill.

Send us 3 chests Tycoon tea, 125, @ 32; 1 chest Tycoon tea, 35 or 50, @ 41c.; 1 chest Tycoon tea, 223, @ 27; 1 bbl. light brown sugar; 20 — Frank's chicory; 1 box Magic yeast; 1 box cheap dried apples; 50 bx. fine evaporated blackberries; 1 keg cheap sal-soda.

SHERMAN BROS.

1 case Columbia yeast powder, $2.00, new lot.

141 E. A. Richmond, dealer in general merchandise, hats & caps, boots & shoes, dry goods & groceries.

LOHRVILLE, IOWA, *Feb.* 1, 1886.

Enclosed draft for bill Jan. 27. Draft, 64.70; dis., 1.33; bills, 66.03.

Please send the following:
Tycoon No. 67, one chest.
" No. 207–8.
1 sack roasted coffee, XX.

E. A. RICHMOND.

AMERICAN EXPRESS COMPANY,
HOMER, M., *Jan'y 3rd*, 1886.

Mess. Corbin, May & Co.

GENTLEMEN: Please send us 5 chests Tycoon tea, No. 112, or same as last, and please ship it at once. We have the last bit on sale now. Our man thought we had another chest, but we are out.

Yours, C. J. MUNCEY & CO.

With this find $50 to apply on acc't.

C. J. M. & CO.

G. H. Taylor, groceries, fruits, vegetables, and oysters.

NORTH LA CROSSE, WIS., 1, 27, 1886.

GENTS: Please send me 5½ chests Tycoon 92, or a match, same as I had last. I bbl. nectar syrup, if it is O K; 2 or 3 doz. 4-oz. c. quill ext. lemon; 50 lb. box maple sugar, in bricks.

Will want 2nd lot tea about May 1st.

Respect-, G. H. TAYLOR.

Return to Fritz & Douglas, Waverly, Bremer Co., Iowa, if not delivered within 10 days.

Envelope postmarked Waverly, Iowa, Jan. 18, 1886.

Addressed Corbin, May & Co., Chicago, Ill.

W. F. Fritz. W. A. Douglas.

Fritz & Douglas, groceries, fruits, oysters, wholesale & retail dealers; kerosene oil, water lime, &c.

WAVERLY, IOWA, *Jan. 16th*, 1886.

C., M. & Co.

GENTS: Enclosed please find d'ft 213.91; dis., 6.60; 220.51 for our credit.

FRITZ & DOUGLAS.

Please send us to-morrow 1 sk. coffee, C. K. No. 12, or the
142 largest berry of the 3 mos. quoted in criterion 7–9–12.
1 sk. coffee, C. K. No. 8; also 5 chests of Tycoon tea, No. 129–130; think that will be a good 50-center.

25 lb. No. 274 young hyson, X. L. N. T.

10 lb. Oolong, No. 17–18; st'm rice. If Mr. Reed is there please refer him to this order, as we wrote him and got no answer. Will be out — tea before it reaches here. Snow 22 inches. I mail.

Corbin, May & Co., Chicago, Ill., to Carl Dice, Dr., wholesale and retail provision house.

MANKATO, MINN., *Dec.* 24, 1885.

GENTS, or MR. WM. GAMBLE: Please ship 5 chests Tycoon No. 112, if you have it. If not send grade you list at 35c. I will not want the Lenox soap. Have put in 100 boxes of Kirk's, selling it 5c. Imperial. Have plenty of prunes.

Merry Christmas to all.

Yours very truly, CARL DICE.

140 EXHIBIT G.

Deposition of C. R. Corbin.

COLUMBUS, WIS., 2, 3, '86.

GENTS: Please send 1 chest Tycoon tea, best you can, at 34 to 35 cts.; 1 doz. Columbia yeast.

Yours, H. LOOMIS.

On the reverse side: Postmarked Columbus, Wis., Feb. 3. Mess. Corbin, May & Co., Chicago, Ill.

Geo. K. Whitney, manufacturer of and dealer in rye, buckwheat, and graham flour, corn-meal, and feed, and dealer in general merchandise.

MERRILLAN, WIS., *Feb'y* 3, 1886.

Corbin, May & Co., Chicago.

SIRS: Please send via Elroy 30-lb. case Adams' Excelsior smo. tob., ¼'s and ½'s; 50 lb. dry goods wrap. paper, 24 x 36, D. D. brown; 40 lb. tea wrap. paper, 18 x 24, D. crown; 50 lb. evap. New York ring cut apples; 2½ chests Tycoon tea, No. 146; 1 case Babbitt's 1776; 5 lb. fancy Penang nutmegs; 1 bbl. back pork, new; 1 bbl. XXX oyster crackers.

Yours, &c., GEO. K. WHITNEY.

E. F. Sherman. C. F. Sherman.

Sherman Brothers, general merchandise.

NEW HAMPTON, IOWA, *Feb.* 1, 1886.

Corbin, May & Co., Chicago, Ill.

Send us 3 chests Tycoon tea, 125, @ 32; 1 chest Tycoon tea, 35 or 50, @ 41c.; 1 chest Tycoon tea, 223, @ 27; 1 bbl. light brown sugar; 20 — Frank's chicory; 1 box Magic yeast; 1 box cheap dried apples; 50 bx. fine evaporated blackberries; 1 keg cheap sal-soda.

SHERMAN BROS.

1 case Columbia yeast powder, $2.00, new lot.

141 E. A. Richmond, dealer in general merchandise, hats & caps, boots & shoes, dry goods & groceries.

LOHRVILLE, IOWA, *Feb.* 1, 1886.

Enclosed draft for bill Jan. 27. Draft, 64.70; dis., 1.33; bills, 66.03.

Please send the following:
Tycoon No. 67, one chest.
" No. 207-8.
1 sack roasted coffee, XX.

E. A. RICHMOND.

AMERICAN EXPRESS COMPANY,
HOMER, M., *Jan'y 3rd*, 1886.

Mess. Corbin, May & Co.

GENTLEMEN: Please send us 5 chests Tycoon tea, No. 112, or same as last, and please ship it at once. We have the last bit on sale now. Our man thought we had another chest, but we are out.

Yours, C. J. MUNCEY & CO.

With this find $50 to apply on acc't.

C. J. M. & CO.

G. H. Taylor, groceries, fruits, vegetables, and oysters.

NORTH LA CROSSE, WIS., 1, 27, 1886.

GENTS: Please send me 5½ chests Tycoon 92, or a match, same as I had last. I bbl. nectar syrup, if it is O K; 2 or 3 doz. 4-oz. c. quill ext. lemon; 50 lb. box maple sugar, in bricks.

Will want 2nd lot tea about May 1st.

Respect-, G. H. TAYLOR.

Return to Fritz & Douglas, Waverly, Bremer Co., Iowa, if not delivered within 10 days.

Envelope postmarked Waverly, Iowa, Jan. 18, 1886.

Addressed Corbin, May & Co., Chicago, Ill.

W. F. Fritz. W. A. Douglas.

Fritz & Douglas, groceries, fruits, oysters, wholesale & retail dealers; kerosene oil, water lime, &c.

WAVERLY, IOWA, *Jan. 16th*, 1886.

C., M. & Co.

GENTS: Enclosed please find d'ft 213.91; dis., 6.60; 220.51 for our credit.

FRITZ & DOUGLAS.

Please send us to-morrow 1 sk. coffee, C. K. No. 12, or the
142 largest berry of the 3 mos. quoted in criterion 7–9–12.
1 sk. coffee, C. K. No. 8; also 5 chests of Tycoon tea, No.
129–130; think that will be a good 50-center.

25 lb. No. 274 young hyson, X. L. N. T.

10 lb. Oolong, No. 17–18; st'm rice. If Mr. Reed is there please refer him to this order, as we wrote him and got no answer. Will be out — tea before it reaches here. Snow 22 inches. I mail.

Corbin, May & Co., Chicago, Ill., to Carl Dice, Dr., wholesale and retail provision house.

MANKATO, MINN., *Dec.* 24, 1885.

GENTS, or MR. WM. GAMBLE: Please ship 5 chests Tycoon No. 112, if you have it. If not send grade you list at 35c. I will not want the Lenox soap. Have put in 100 boxes of Kirk's, selling it 5c. Imperial. Have plenty of prunes.

Merry Christmas to all.

Yours very truly, CARL DICE.

Ship tea at once. Most out. C. D.

RICHFORD, VT., *Nov.* 9, '85.

COUSIN ORANGE: Please send us ½ chest Tycoon No. 46.
3 hf. " " " 59.

Please send bill as soon as you ship goods, so we can take dis. for full time. All well as usual. Love to all.

Yours truly, H. HAWLEY,
Per SON.

Stevenson & Tower, dealers in dry goods, groceries, boots, shoes, hats, caps, & clothing.

BIG STONE CITY, DAK., *May* 8, '85.

Mess. Corbin, May & Co., Chicago.

GENTLEMEN: Enclosed please find $22.50 to bal. acct., with the disct., 70c.

Please send ½ chest Tycoon tea, cost about 27c. Also ½ chest at about 33c. to 35c.

Where is that elegant show card that we heard about last fall?

Yours, &c., STEVENSON & TOWER.

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143 Office of Chas. Wickware, dealer in staple and fancy groceries, crockery, glass, stone, and wooden ware. Sole agent for the sale of flour from the Washburn Mills, Minneapolis, Minnesota.

WEBSTER CITY, IOWA, *Feb'y* 12, 1885.

Messrs. Corbin, May & Co., Chicago, Ills.

GENTLEMEN: In invoice of Jan'y 14 you billed 1 crate dandy quart pails, at 13.50, but sent crate of pint pails instead. Please give me credit for difference in price and send me 1 crate dandy quart pails.

2 pkgs. No. 52–53 Tycoon tea.
3 " 220–21 " "
1 " No. 2 Eng. breakfast—smallest pkg. you have.
10 lb. sago. 1 box white gum. 1 box rubber gum.
1 box Elgin Winning Heart.
2 doz. grocers' pass books.

And oblige yours truly, CHAS. WICKWARE.

C. W. Taylor. C. W. Taylor & Co. A. H. Loucks.

Wholesale and retail dealers in staple and fancy groceries, provisions, etc., Main street.

AUSTIN, MINN., *Sept.* 24, 1884.

Corbin, May & Co., Chicago, Ills.

GENTS: Ship us 27c. Tycoon tea, same as last lot you shipped us, at 27½c. Where is the 5 H-C that you were to ship us Sept. 5th to 10th? We are entirely out and need it bad.

Yours truly, C. W. TAYLOR & CO.

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EXHIBIT H.

Deposition of C. R. Corbin.

Some of the towns in the State of Michigan where Tycoon tea has been sold by Corbin, May & Co.:

Jackson,
Adrian,
Ypsilanti,
Kalamazoo,
Battle Creek,
Marshall,
Charlotte,
Cheboygan,
Grand Rapids,
Cassopolis,
Bronson,
Escanaba,
Lawrence,
Hastings,
Paw Paw,
Eaton Rapids,
Hillsdale,
Coldwater,
Centerville,
Nashville,
Vermontville,
Jonesville,
Concord,
Fowlerville,
Allegan,
Gobbleville,
Niles,
Lawson,
Climax,
Morenci,
Keelersville,
Schoolcraft,
Union,
Leslie,
Berrien Springs,
Scotts,
Dowagiac,
Marcellus,
Jones,
Edwardsville,
Otsego,
Coopersville,
Quincy,
Ionia,
Three Rivers,
Litchfield,
Augusta,
Sturgis,
Galien,
Benton Harbor,
Fowler,
Nahma,
Constantine,
Nottawa,
Mendon,
Hopkins Station,
Milan,
Clayton,
Altona,
Mattawan,
Eau Claire,
Bellaire,
Sister Lakes,
Newaygo,
Grand Ledge,
Sherwood,
Three Oaks,
Middleville,
Stromsville,
White Cloud,
Saugatuck,
Vandalia,
Ludington,
Salina,
Petosky,
Plymouth,
Medina,
Iron Mountain,
So. Haven,
Blissfield,
Fruitport,
Bellevue,
Watervliet,
Big Rapids,
Wayland,
Vicksburgh,
Point Sable,
Gun Lake,

scroll border, transverse diamond shape. These have generally been arranged as shown in the accompanying fac-simile. The design is a square figure formed by a scroll border, within which and at the top is a transverse diamond shape in blue ink, containing within it the words "The" at the top and "Tea" at bottom, between which words and lengthwise of the diamond is the word "Tycoon" in ornamental letters, all of the words "The Tycoon Tea" being printed in blue ink; within the square, as described, and beneath the diamond shape the letters "I. C. & M." from left to right across the middle of the square; immediately beneath the letter or symbol "&," as described, the letter "C," and across the bottom of the square, as described, the words or letters "Japan Tea" within the border. The border and the letters or words "I. C. & M., C., Japan Tea" are printed in black ink upon a white ground; but the design may be printed in any different colors from those described in this statement, and the letters or words "I. C. & M., C., Japan Tea" may be omitted or they may be partly omitted and partly changed as to their position within the square without materially altering the character of our trade-mark, the essential features of which are the symbol of a diamond and the arbitrarily selected word "Tycoon."

150 This trade-mark we have used continuously in our business since June 1, 1879.

The class of merchandise to which this trade-mark is appropriated is a particular quality of uncolored pan-dried tea, of which we were the first and exclusive importers and wholesale dealers in the United States, and the particular description of goods comprised in such class on which we use the said trade-mark is the Tycoon tea.

It has been our practice to attach the said trade-mark to all packages containing the Tycoon tea by pasting the printed design above described upon the outside of the chest, caddy, or package.

The trade-mark is also used as a portion of the advertisements of our trade or business upon letter and bill heads and circulars, substantially as described.

INGRAHAM, CORBIN & MAY.

Declaration.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Horatio N. May, being duly sworn, deposes and says that he is a member of the firm of Ingraham, Corbin & May, the applicants named in the foregoing statement; that he verily believes that the foregoing statement is true; that they have at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with Japan and British North America; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that they are citizens of the United States.

HORATIO N. MAY.

Sworn and subscribed before me, a notary public in and for the county aforesaid, this 8th day of November, 1881.

[L. S.]

P. L. SHUMAN,
Notary Public.

(Here follows photo-lithographs, pp. 151, 152.)

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EXHIBIT L.

Deposition C. R. Corbin.

Diamond gift tea store, W. H. Hamilton, proprietor: Teas, coffees, and fancy groceries, wholesale and retail, No. 115 Main street, east.

JACKSON, MICH., *August* 4, 1885.

DEAR SIR: Last evening W. J. Gould, of Detroit, their man, was here, and he was in high glee, saying that he could give me the Tycoon tea now. I asked him what he meant. He said that they were going to run the Tycoon brand, and he would show me the facings of the chests this morning; so he came in this a. m. & showed me the facing, and the brand was Tycoon tea. I did not let him know that I cared for it, but it made me feel a little nervous; for, if they can run that brand there is some that will do all they can against me here. He says that you have no — right to the copyright than they have. I only write this to put you on your guard, so you can check it before it goes into execution. You know what you can do & you must protect me to the last. Trade is pretty good at present.

Yr. truly,

W. H. HAMILTON.

EXHIBIT M.

Deposition of C. R. Corbin.

BATTLE CREEK, *Sept.* 17, '85.

Corbin, May & Co., Chicago, Ills.

GENTLEMEN: Yours of 16th —, *re* "Tycoon chop" tea. I wrote you some time since that they had 25 hf. ch. Tycoon chop, and of course supposed you would know they bought them to sell against your Tycoon & not for an ornament, and when I wrote you that they had the tea in stock you took no chances on my word, for I saw the goods before I wrote you; and now they have the goods exposed in both windows, and are talking Tycoon chops, 3 lbs. for $1.00, and of course it interferes with L. & J. & my own trade in the teas. I have been surprised that there has been nothing done before this, as I supposed if there was any virtue in a copyright C., M. & Co. would, without any delay, assert their right.

Waiting your action in regard to above,

I am yours, &c.,

ALLEN RAYMOND.

You will see their ad. in the "Sunday Morning Call," mailed you Monday.

A. R.

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EXHIBIT N.

Deposition of C. R. Corbin.

Postal card.

BATTLE CREEK, *August* 31, '85.

Moulton & Stanley to-day received 25 hf. ch. Tycoon chop tea from W. J. Gould & Co., Detroit. If you propose standing behind the tea, now is the time to do it, before the great "Tycoons" are superseded by "Tycoon chop."

Respectfully, ALLEN RAYMOND.

EXHIBIT O.

Deposition of C. R. Corbin.

CHICAGO, *August* 7, 1885.

Mess. Corbin, May & Co., 89 Mich. avenue.

GENTLEMEN: We have to-day mailed a letter to W. J. Gould & Co., of Detroit, calling their attention to the reported use by them of the trade-mark owned by you for Tycoon tea, as requested by you, and enclose you a copy of same, together with papers left with us.

As soon as we hear from these parties we will advise you.

We are, very respectfully,

SHUMAN & DEFREES.

EXHIBIT P.

Deposition of C. R. Corbin.

CHICAGO, *August* 7, 1885.

W. J. Gould & Co., Detroit, Mich.

GENTLEMEN: Permit us to call your attention to the trade-mark for Tycoon tea which Mess. Ingraham, Corbin & May, now Corbin, May & Co., of 89 Michigan avenue, Chicago, had registered in accordance with the statutes of the United States some two or three years ago. It has been reported to us by persons doing business with your house that you are using in your trade a mark for the "Tycoon chop" which is similar in design to Corbin, May & Co.'s trade-mark and which you use upon chests of tea. If this information is correct it is proper for us to say to you, as the attorneys of Corbin, May & Co., that we presume you are not aware of the fact that they are the sole owners of the trade-mark for Tycoon tea in the United States, and to request you not to employ said trade-mark in your business except upon teas of Corbin, May & Co. properly branded by them.

We assume that the intimation from us of a possible injury to Corbin, May & Co.'s business by the use of an infringement of their trade-mark will be sufficient to cause a discontinuance of such use on your part, and we shall be pleased to learn either that you have never employed the trade-mark mentioned or have ceased to use it.

Awaiting a reply, we are, very respectfully,

SHUMAN & DEFREES.

155 EXHIBIT Q.

Deposition of C. R. Corbin.

CHICAGO, *August* 22, 1885.

W. J. Gould & Co., Detroit, Mich.

GENTLEMEN: We would call your attention to our letter of the 7th instant, relative to the trade-mark for Tycoon tea owned by Mess. Corbin, May & Co., of this city, and which they had been informed you were using, unconscious, they supposed, of the fact that the trade-mark belonged to them, and would request that you kindly answer same, giving us the true state of things in this regard.

Mess. Corbin, May & Co. do not wish to make any trouble, but feel bound to protect their interests and that of their customers.

We shall be pleased to hear from you at an early date.

We are, very respectfully,

SHUMAN & DEFREES.

EXHIBIT R.

Deposition of C. R. Corbin.

DETROIT, MICH., *Aug.* 31*st*, 1885.

Mess. Shuman & Defrees.

GENTLEMEN: Yours of 22nd and 7th inst. were duly received, but owing to the absence of the writer were not answered. I have just returned from a trip East. I buy all the teas bought by this firm. Bought one hundred chests branded Tycoon chop. At the time they were ordered had never heard that Messrs. Corbin & May claimed to own the brand or name. The first that I knew of it was from a Mr. Frank Davis, salesman for Mess. Fitch & Howland, of your city. I was showing him the facing, and he remarked that he thought Mess. Ingraham, Corbin & May had a copyright of that brand. I then went East, and on my return found your letters. Now, I do not think if there had been any intention of stealing I., C. & M.'s thunder that one hundred chests would have been the limit to do it with, for certainly they themselves would laugh at such an attempt with so small a gun. It is not at all likely that we may again hit on that chop when buying, but there was no attempt at any imitation that I know of, and I can and will, if they so desire it, go before any magistrate and make affidavit that I have never seen one of the facings on their tea. As to Tycoon tea they are not the originators of that brand, for Gould & Fellers sold a Japan tea in 1867–'8, Glenisla cargo, branded Tycoon tea. Of course, at that time it was not a sun-dried but a regular tea. Now, we have no de-

sire to have any trouble with Mess. Corbin, May & Co., and certainly do not wish to steal any one's trade-mark or imitate labels used by other firms, and we regret that this has occurred, for had it been known by this firm that it would in any way injure or annoy firms in the same line of business we never should have bought the tea, and in future there will be no complaint on that hand,
156 for we think that the facing on teas or labels on goods that are used by one firm should be respected by others, whether they are copyrighted or not; and we think something of our reputation among the importers of your city.

Respectfully yours, W. J. GOULD.

Exhibit S.

Deposition of C. R. Corbin.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

Chicago, *Sept.* 1, 1885.

W. J. Gould & Co., 61 & 63 Jefferson Ave., Detroit, Mich.

Gentlemen: Your letter of the 31st ultimo, in the matter of the trade-mark "Tycoon," has been received, and we have forwarded it to Corbin, May & Co. Your statement seems to leave no room to question your good faith in the matter, and we have to say that we consider your explanation of the way you came to have the Tycoon tea as quite satisfactory.

We are, very respectfully,

SHUMAN & DEFREES.

Exhibit T.

Deposition of C. R. Corbin.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

Chicago, *Sept.* 2, 1885.

W. J. Gould & Co., 61 & 63 Jefferson Ave., Detroit, Mich.

Gentlemen: Having referred your letter of Aug. 31st to Corbin, May & Co. for their consideration, they now advise us of certain facts in regard to the Tycoon tea which are inconsistent with the terms of your communication. It appears that about August 4th one of your salesmen called upon one of the customers of Corbin, May & Co. up in the country and informed him that your house was ready to supply him with the Tycoon tea, and that your house was going to run that brand; also that you didn't consider that Corbin, May & Co. had any special right to the brand Tycoon. In addition to this we have, during the past ten days, received from various parties statements that your salesmen are offering "Tycoon" tea freely to them. We also observe that the Detroit Commercial of the 8th and 22nd of August contains a full-page advertisement of your firm, in which you announce that you have four hundred chests of the Tycoon chop, per Harmonia, and one of 157 those two papers contains a puff paragraph of your firm, to the effect that you have shipped 631 chests and have other large orders to fill.

The best that can be said of this lay out of facts is that it looks very bad when compared with the statements in your letter of the 31st. You therein assert that you have never had but one hundred chests of the brand complained of, and at that very time you were spreading the news among Corbin, May & Co.'s customers that you had 400 chests by one vessel.

You further state that you were ignorant of the fact that Corbin, May & Co. were selling Tycoon teas. They have been engaged in the business of importing and selling this particular brand of tea for several years, and it is fair to assume that there is not a reputable firm of grocers and dealers in tea or a salesman worthy of the name in the business, between New York and San Francisco, that has not been advised that the Tycoon tea is imported and sold by Ingraham, Corbin & May or Corbin, May & Co.

You say in closing your letter that you would not knowingly be guilty of cheating your neighbor or stealing the benefit of his trade-mark, and that you wish to stand well with the importers of Chicago.

Let us say that, being thoroughly disinterested parties, we were very much pleased with the way in which you expressed yourselves upon that point of commercial honor and fair dealing, and we were greatly surprised to learn of the existence of the facts above alluded to.

Now, as honest merchants, we have this request to make of you, viz., that you change the facings of whatever chests or half chests or other packages of tea bearing the name "Tycoon" upon them you may have in your possession, and stop the offer or sale of any such goods by your salesmen, at the same time informing the trade in general and the customers of Corbin, May & Co. in particular that you do not sell and will not sell or offer for sale the piratical brand of tea called Tycoon chop. You cannot go too far in your efforts to repair the damage which you have inflicted upon Corbin, May & Co. in thus pirating their trade-mark.

We are instructed by our clients to watch this case zealously in the interest of their trade, and we now beg to inform you that if we have any well-grounded reason for believing that you continue to offer for sale any tea under the infringing trade-mark, we shall apply to the United States court for such relief as is proper in such cases, and endeavor to compel you to account to Corbin, May & Co. for the damage you have already done them. Their customers demand, in almost every mail, that they be protected from the threatened invasion of the market by your so-called Tycoon chop.

Awaiting your reply, we are, very respectfully,

SHUMAN & DEFREES.

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EXHIBIT U.

Deposition of C. R. Corbin.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

CHICAGO, *Sept.* 3, 1885.

W. J. Gould & Co., 61 & 63 Jefferson ave., Detroit, Mich.

GENTLEMEN: Further in reference to the matter of the trade-mark "Tycoon," about which we addressed you yesterday, we have to say that upon reading our letter again it seems that it might be construed as reflecting upon the veracity of your Mr. Gould's statements in his letter referred to by us. We beg to add, in this connection, that such was not the intention, but to inform him of facts which undoubtedly emanated from the firm, and about which it is very likely Mr. Gould did not have personal knowledge, as it seems he was absent during the period referred to. Corbin, May & Co. simply desire that your firm shall stop all attempts to sell or offer for sale the Tycoon chop under that name, and that you cease advertising that you are importers of Tycoon tea, at the same time notifying persons whom you have sold the tea of your action. Our clients instruct us to say that while they desirous to be courteous and avoid any unnecessary trouble, still they are bound to protect their trade, and they hope you will act in the same spirit.

We are, very respectfully,

SHUMAN & DEFREES.

EXHIBIT V.

Deposition of C. R. Corbin.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

CHICAGO, *Sept.* 1, 1885.

Mess. Corbin, May & Co., 89 Mich. Ave.

GENTLEMEN: We herewith transmit for your information a letter of August 31, from W. J. Gould & Co., Detroit, in reply to our two letters upon the subject of the "Tycoon" trade-mark.

We have acknowledged the receipt of the letter and have said to Gould & Co. that the spirit of their letter is in accordance with our views of business honor and commercial fair dealing, and that we hope Corbin, May & Co. may not have any cause to call their attention to the matter again.

We are, very respectfully,

SHUMAN & DEFREES.

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Exhibit W.

Deposition of C. R. Corbin.

The Detroit Commercial, the representative trade journal of Michigan.

Detroit, Mich., *August* 22, 1885.

Big tea shipment.

The shipment of teas made by N. J. Gould & Co. on Wednesday amounted to 631 chests, and they have orders yet to fill. This is claimed to be the largest shipment of teas ever made from Detroit in one day.

In the same paper the following advertisement:

W. J. Gould & Co. Pan-fired, 573 chests per Harmonia, 250 chests per Oceanic, 533 chests per Glenaron. Sun-dried, 400 chests Tycoon chop per Harmonia, 125 chests per Oceanic, 175 chests per Glenaron.

New Japan teas. Our own importation by rail; also by Suez canal. Send for samples and prices before buying.

61 & 63 Jefferson Ave., Detroit.

Same advertisement to be found in same paper of August 8, 1885.

Exhibit X.

Deposition of C. R. Corbin.

Advertisement in the Sunday Morning Call of Battle Creek, Mich., Sept. 13, 1885.

Tycoon chop tea cannot be beaten in Battle Creek, and "don't you forget it." It is sold at Moulton & Stanley's.

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Exhibit Y.

Deposition of C. R. Corbin.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

Chicago, *Sept.* 2, 1885.

Mess. Corbin, May & Co., 87 & 89 Mich. Ave.

Gentlemen: We herewith enclose you duplicates of letters this day written by us to W. J. Gould & Co., Detroit, and Moulton and Stanley, Battle Creek, Michigan, concerning the use of the Tycoon trade-mark.

We are, very respectfully,

SHUMAN & DEFREES.

Law offices Shuman & Defrees, Borden block, corner Randolph and Dearborn streets.

CHICAGO, *Sept.* 2, 1885.

Mess. Moulton & Stanley, Battle Creek, Mich.

GENTLEMEN: We have been informed that your house has received a quantity of teas from the grocery house of W. J. Gould & Co., Detroit, labelled "Tycoon chop." As attorneys for Corbin, May & Co., Chicago, who are the sole importers of "Tycoon teas" and the sole owners of that trade-mark for teas, we have to inform you that the use of the word "Tycoon" to designate a particular brand of teas by any person or firm other than Corbin, May & Co. or their agents and customers is an infringement of their rights, and that we have been instructed to warn every one so using their trade-mark that they will take proper legal steps to compel a discontinuance of its use if necessary. You will please take this as a notice to you, and you are requested to not sell such teas as you may now have on hand without first removing the facings showing the word "Tycoon," and also informing your customers that such is not "Tycoon" tea.

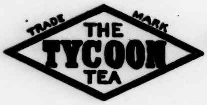
Awaiting your reply, we are, very respectfully,

—— ——.

161 EXHIBIT Z.

Deposition of C. R. Corbin.

QUINCY, MICH., *Aug. 5th*, 1885.



Corbin, May & Co., Chicago:
Ship to W. J. Wilber & Co.
Address: Quincy, Mich., via L. S. & M. S.

Importers of the Tycoon uncolored Japan tea and sole agents for clear quill spices, baking powder, extracts, lye, and potash.

No. 5.

Ship about Sept. 1st,
4 months, Sept. 15th,
5 hf. ch. Jap. tea, Tycoon No. 66–69. 37

C. C. Lee, Coldwater, ordered a hf. ch. of siftings and one of leaf to try; will make his order later. W. J. Wilber & Co. here buys most of his groceries of W. J. Gould & Co., Detroit. Their man showed him a chest facing branded "the Tycoon chop" in the form of an arch at top of facing. He told Wilber had not sold any in this town; will look out for it and report further.

Resp'y, WM. M. GAMBLE.

162 United States Circuit Court for the Eastern District of Michigan.

Depositions of Allen Raymond and George Shekell, of Battle Creek; Charles Lamb, of Charlotte; William H. Hamilton, — in the State of Michigan, and William M. Gamble, of Chicago, in the State of Illinois, witnesses produced and examined on the tenth day of February, A. D. 1886, at the city of Jackson, county of Jackson, State of Michigan, before me, a circuit court commissioner in and for said county of Jackson, pursuant to the stipulation hereto annexed and for the purpose therein stated, to be used in a certain cause now pending in the United States circuit court for the eastern district of Michigan, wherein Calvin R. Corbin *et al.* are complainants and Walter J. Gould *et al.* are defendants, on the part of the complainants.

W. S. COBB,
Circuit Court Commissioner, Jackson County, Michigan.

163 Circuit Court for [of] the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.* *vs.* WALTER J. GOULD *et al.*

CHARLES LAMB, a witness produced and sworn for and on the part of the complainants, testified as follows:

Q. State name, age, residence, and occupation.

A. Charles B. Lamb; age, thirty-five; residence, Charlotte, Mich.; occupation, merchant.

Q. How long have you been in business?

A. Six years.

Q. During the time you have been in the grocery business have you known of a brand of tea called the Tycoon tea?

A. Yes, sir.

Q. By whom was that tea imported to the United States and sold in the market, if you know?

A. The first I ever saw of the brand was put in the market by Corbin, May and Co., of Chicago.

Q. About how long ago was that?

A. I think it was about three years since.

Q. Do you know whether or not that brand of tea is a well-known and popular tea in the market?

A. I don't know as to that.

Q. Have you in the course of your business purchased teas from W. J. Gould and Co., of Detroit, with a facing containing the word Tycoon?

A. Yes, sir.

Q. Please state the circumstances attending the purchase of that tea.

A. I purchased fifty packages of tea from W. J. Gould and Co. of the Tycoon chop facing.

Q. What was the value of those packages?

A. About eleven hundred dollars, I think.

Q. With whom did you make your bargain for the purchase of those teas?

A. James McSkimin.

Q. He was a traveling salesman for the company, was he not?

A. Yes, sir.

Q. When was this?

A. I think in the latter part of August, A. D. 1885.

Q. What did Mr. McSkimin say when the subject of Tycoon chop was suggested?

A. There was nothing said about the Tycoon chop; he merely gave me the facing of the tea.

Q. What was the prominent word upon that facing?

A. I think it was the Tycoon chop upon the facing.

Q. Did you say anything to him about having purchased Tycoon tea?

A. No, sir.

Q. What kind of tea was it that he sold?

164 A. A Japan tea.

Q. Did it resemble in general appearance the Tycoon tea of Corbin, May and Co.?

A. It was not the same color. The tea was a little lighter, I think, than the Corbin, May and Co. tea.

Q. Was anything said about its being pure?

A. It was supposed to be an uncolored tea; that was what we purchased it for.

Q. You have seen the facing on the Tycoon tea of Corbin, May and Co.?

A. Yes.

Q. What was the prominent word upon that facing?

A. If I remember, it was Tycoon.

Q. Do you know the meaning of the word chop as used upon tea?

A. I suppose that the finer the tea was rolled the better the chop.

Q. Did McSkinen say anything about the meaning of the word chop?

A. No, sir.

Q. There are other so-called uncolored Japan teas sold in the market, are there not?

A. Yes, sir.

Q. Have you ever seen any other tea than that of Corbin, May and Co. and that which you have purchased from W. J. Gould and Co. faced with the word Tycoon?

A. No, sir.

Q. Have you seen any of the advertisements of Corbin, May and Co. of the Tycoon tea?

A. Yes, sir; I have.

Q. Many of them?

A. No, sir.

Q. Where have you seen them?

A. Their traveling man had them with him when I met him.

Q. Did you and their traveling man have any conversation regarding the character of the Tycoon tea?

A. Yes.

Q. State the substance of the conversation.

A. He claimed that they were pure teas; that was the force of his argument.

Q. Do you know anybody else in the retail trade who deals in the Tycoon tea?

A. Not personally; only from hearsay.

Q. What have you heard?

Objected to by counsel for defendants on the ground that it is incompetent and immaterial.

A. I have been told that Mr. Hamilton, of Jackson, sold the tea, and Corbin and Harris, of Eaton Rapids, York Brothers, of Belleview.

Q. How long before you purchased the tea was it that Mr. McSkinin showed the facing?

A. I did not see the facing until the day the tea was delivered; the facing was left with us then.

Q. Then you decided upon the purchase after you had drawn the tea?

A. Yes, sir.

165 Q. How long was that before you received the fifty packages?

A. I would not be sure; about two weeks. There was some delay in shipment.

Q. Was it not in the latter part of July when Mr. McSkinin called upon you?

A. I will not be sure about the dates.

Q. Did McSkinin say anything about how many packages Gould and Co. had of the Tycoon chop?

A. He did not, only of the particular line I bought.

Q. Did you buy the whole of that line?

A. That was the supposition.

Q. Don't you remember that Mr. McSkinin spoke to you about Gould and Co. intending to sell the Tycoon tea or Tycoon chop, and that it was practically the same tea — that Corbin, May and Co.'s?

Objected to as immaterial, inasmuch as the witness has given the coversation.

A. No; nothing said about Corbin, May and Co. when we purchased the tea.

Q. Was anything said about Tycoon tea at any of your conversations?

A. Nothing was said about the Tycoon tea at the time we purchased the tea.

Q. Was anything said afterwards?

A. Nothing was said until after the injunction was served upon us; nothing had been said about the matter before that. It was then a question of law, that is all.

Cross-examination:

Q. When you bought this tea you were also having some dealings with B. F. Farrington and Co., of Detroit, were you not?

A. Yes, sir.

Q. Farrington had a brand of tea which he called the Strawberry chop, did he not, and exhibited it to you at that time?

A. Yes, sir.

Q. This was about the same grade as Gould's and the same price was asked for it?

A. Yes, sir.

Q. You telephoned Gould, did you not, that if he would cut his price one-quarter per cent. you would take his tea?

A. No.

Q. The tea was purchased without any reference to the word Tycoon. That was not the inducement for you to purchase the tea?

A. No, sir.

Q. When the suit was commenced against Mr. Gould and his copartners what disposition was made of the tea you then had on hand?

A. It was held subject to Mr. Gould's order.

Q. Was it replaced by other tea?

A. It was.

Q. And no further sales of tea have been made by you, has there?

A. No, sir.

Q. How much remained of this original invoice of tea then undisposed of?

166 A. Forty-two packages.

Redirect:

Q. If a person would come into your store and ask for a pound or other quantity of Tycoon tea what would you give them?

A. I should give them the tea that I had on sale for the price they wanted to pay.

Q. At the time you had this tea from Gould on hand for sale I understand you would have given that to a customer who asked for Tycoon tea?

A. When I had the tea on sale I should give them that if they asked for it.

Recross-examination:

Q. Did you ever have a customer ask for Tycoon tea?

A. No, sir.

167 **William H. Hamilton**, a witness produced and sworn for and on the part of the complainant, testified as follows:

Q. What is your name, age, residence, and occupation?

A. Name, William H. Hamilton; residence, city of Jackson; occupation, tea store; age, forty-nine.

Q. How long have you been in business?

A. I have been in business here about seven years.

Q. Are you acquainted with the various brands of tea which are sold in this market?

A. I am.

Q. What extent of country is embraced in the retail trade in Jackson?

A. From twenty to twenty-five miles round.

Q. Do you know of a brand of tea called the Tycoon tea?

A. I do.

Q. How long have you known it?

A. I think it has been about four years.

Q. Have you dealt largely in that tea?

A. I have.

Q. Do you advertise it?

A. I do.

Q. To what extent?

A. Well, I advertise in two daily and two weekly papers and have a sign.

Q. By what name do you advertise that tea?

A. As Tycoon tea.

Q. What kind of tea is it?

A. It is an uncolored Japan tea, very fine in flavor and good strength.

Q. Is it or is it not a popular brand of tea among consumers in a retail way?

A. It is very much so here.

Q. By what name is this tea known among consumers?

A. Tycoon tea is what they ask for.

Q. Do consumers see the facing of the tea?

A. Not particularly so; they are not where they can see it often.

Q. Have you seen a facing other than that of Corbin, May and Co. used on so-called uncolored Japan tea sold by W. J. Gould and Co., of Detroit?

A. I never saw the facing only as I saw it by Mr. McSkinin. He unrolled it and I saw the word Tycoon chop. He came in and said he could sell me Tycoon tea now. Well, I said that was all right, but I doubted it very much. He said in the morning he would show me the facing of the tea. In the morning he came in and showed me the facing. I said time would tell whether he had a right to sell it to me or not. He said there was no law that would prevent it. I said if there was not it was a mean man that would take the word Tycoon to build up a business on. That is all that was said at the time.

Q. What did you do after that—shortly after that?

A. The next day I wrote a letter to Corbin, May and Co. that I had been offered the Tycoon chop.

Q. What would be the effect upon the business of Corbin,
168 May and Co. to have a tea similar to theirs in general appearance sold under the name Tycoon by other parties to the retail trade—that is, to the retail dealers—in the same market where their tea is sold.?

A. I would consider it would injure my trade very much; also theirs.

Q. Tell us how these teas which you sell are exposed in your store.

A. I have boxes with all grades of teas in and cards on each box. The Tycoon teas have a card on each box and the price. The consumers come in and point out the tea they want—the Tycoon tea—of which we sell probably four times as much as of all others.

Q. About how much does your business in Tycoon tea amount to annually?

A. From the first of July last to the first of January, I think, there was ninety-three chests, which would average seventy pounds and average about twenty-eight to thirty cents to the pound, the whole business amounting in round numbers to about eighteen hundred dollars.

Q. That is about the amount you have purchased from Corbin, May and Co.?

A. Yes.

Q. Then I understand you that the annual business in this Tycoon tea would average in the neighborhood of about thirty-six hundred dollars?

A. Of course it is increasing all the time, but that would be a fair average for the past; you might say three thousand.

Q. What is your understanding as to the Tycoon tea being different with regard to its manufacture from the other Japan teas sold in the market?

A. It may have the appearance of the other teas, but, in my opinion, it is a much purer tea than the other and finer in flavor.

Q. Do you know whether or not it has been largely advertised by Corbin, May and Co. to consumers and dealers?

A. Only that I have noticed it in Chicago papers and such as those.

Q. I understand you to say it is perceptibly growing in favor in the market among consumers?

A. It is very much so.

Q. To what do you attribute the increase in its popularity?

A. In the quality and price. It is a better tea for the money than any other I can get hold of.

Q. Have you ever heard of any other Japan tea than that of Corbin, May and Co.'s being sold under the name Tycoon except that of these defendants?

A. I never have.

Cross-examination:

Q. How many grades of this Tycoon tea do you carry?

A. Three.

Q. What is the cost price to you of those grades?

A. They run twenty-one, twenty-eight, and thirty-two.

169 Q. What other Japan teas do you deal in?

A. All grades.

Q. Did you examine or draw the so-called Tycoon chop that McSkinin was selling?

A. I did not see the tea, so I do not know as to the relative merits of the Tycoon tea and the so-called Tycoon chop.

Q. You say you know Mr. Walter J. Gould, of Detroit?

A. I have purchased goods from him and know him by reputation.

Q. You sold him one pound of the Tycoon tea, did you not?

A. Yes, sir.

Q. Which one of your Tycoons was that?

A. That was a medium; one we sell for fifty cents.

Redirect:

Q. On your direct examination you stated that you had seen the advertisements of the Tycoon tea in the Chicago papers. Is that the extent of the advertising which you have any knowledge of regarding these Tycoon teas?

A. Corbin, May and Co. have sent me a great deal of advertising matter, which I have distributed about through the country, more or less, and also a very large banner showing the manufacture of those teas.

Q. They have invariably represented these teas to be pure teas of a particular manufacture, have they not?

A. Particularly the mode of firing the tea that gives them the flavor.

170 **George W. Shekell**, a witness produced and sworn for and on the part of the complainant, testified as follows:

Q. State name, age, residence, occupation.

A. Age, thirty-two; hardware clerk; residence, Battle Creek.

Q. Do you know a firm of two merchants in Battle Creek by the name of Molton and Stanley?

A. I do.

Q. Did you purchase any tea from them in September or October of 1885?

A. I did.

Q. What did you ask for?

A. I asked for Tycoon tea.

Q. What did you get?

A. I got Tycoon chop.

Q. How much did you buy?

A. One chest.

Q. Do you know what became of that chest of tea?

A. I could not say; I know where I delivered it to. It was sent to Detroit, to the United States court.

Q. At whose request did you purchase the tea?

A. At Mr. Raymond's.

Q. You made an affidavit the day on which this tea was purchased by you, did you not, setting forth the circumstances?

A. I did.

Q. Did you ever see a tea facing of Corbin, May and Co. of the Tycoon tea?

A. I did; at Raymond's tea store.

Q. Do you remember the charactor of the facing on the Tycoon tea?

A. It was very similar to the Tycoon tea facing, except the word chop was added.

Q. Would a casual observer or purchaser be likely to be deceived into purchasing the tea marked Tycoon chop which you have described, as and for the tea marked Tycoon, which you have described?

A. Well, I could not say, only as to myself. It would be very difficult for me to distinguish the difference, unless I examined it very closely.

Q. Don't you think that would be the case with an ordinary person?

A. Yes, sir; I do.

Q. Do you know whether or not the Tycoon tea sold by Corbin, May and Co. is popular in the market?

A. I do not, only as it is advertised by Mr. Raymond, who advertises it very largely.

Cross-examination:

Q. It was Mr. Raymond, of Battle Creek, who asked you to get this tea?

A. Yes, sir; a gentleman who deals in tea in Battle Creek.

Q. Are you a customer of Mr. Raymond's?

A. Not particularly; no, sir; no more than anybody else.

Q. You do not know the relative merits of the two teas from your own experience?

A. I do not; I do not drink tea myself.

171 **Allen Raymond**, a witness produced and sworn, testified as follows:

I am twenty-eight years of age; occupation, grocer; residence, Battle Creek.

Q. Do you deal in Tycoon tea of Corbin, May & Co.?

A. I do.

Q. How long have you so dealt in it?

A. Three years.

Q. What kind of tea is it?

A. It is an uncolored Japan tea.

Q. Does it differ from the ordinary Japan tea of commerce in any respect; and, if so, what, if you know?

A. In appearance it differs from any other teas we handle, and in drinking qualities we like it better than any of the Japan teas.

Q. Has it the reputation in the market among consumers of being different from that ordinarily sold?

A. I can't say, only as to the satisfaction the tea gives as compared with other teas. It gives my trade better satisfaction than any other Japan teas I have ever handled.

Q. Has this tea been largely advertised?

A. I have advertised it extensively in my business, making a leader of the Tycoon tea.

Q. Does any other dealer in Battle Ceek sell the Tycoon tea?

A. I have seen packages at Leon and Jennings. I do not know whether they deal in it or not. I have never heard of it through any of my customers.

Q. They are customers of Corbin, May and Co., are they not?

A. I presume the same stamp is on their chests as on mine.

Q. By what name do consumers call for this tea?

A. Always Tycoon.

Q. Do the consumers see the facings upon the chests, and in selecting tea are they controlled in any way by the character of the facing?

A. We empty all of our chests into boxes of our own, and have tin boxes on the counters which are labeled.

Q. So far as the facing is concerned, it would be an easy matter to deceive a customer into purchasing a different Japan tea under the name of Tycoon, would it not?

A. It could be done once; in fact, I have purchased tea once or twice to take the place of Tycoon at a less price. They were guaranteed to me to be as good, but they did not give satisfaction. I had to go back to the Tycoon.

Q. What would be the effect upon Corbin, May and Co.'s business in Tycoon teas to have some one else sell a tea resembling theirs in general appearance under the name Tycoon?

A. In my judgment, it would curtail the sale of Corbin and Co.'s Tycoon tea. This Tycoon chop was advertised by Molton and Stanley, and it interfered with our trade in Tycoon tea.

Q. Your customers were deceived into purchasing the tea of them?

A. They bought the Tycoon chop for less price under the impression that it was Tycoon tea, and it did not give satisfaction.

172 Q. Do you know the Mr. McSkinin who has been referred to here?

A. I do. He was Gould's traveling agent. Some time last summer or in the early part of the fall he came to me and showed me a facing for a tea chest with the words Tycoon chop, and told me that they were going to handle it and could sell it for less than Corbin, May & Co. did. I told him I had bought teas outside of Corbin, May & Co. to take the place of Tycoon teas, but did not propose to do so again. He said they could not get a trade-mark on their word Tycoon; he also said they were going to run these teas against the Tycoon. After I had this conversation with McSkinin I saw twenty or more half chests of tea at Molton and Stanlie's labeled Tycoon chop, and notified Corbin, May & Co. of that fact. I wrote them two or three letters regarding this matter.

Q. Is it not true that you had your conversation with McSkinin some time prior to seeing the boxes of tea in front of Molton and Stanlie's?

A. It was. He first showed me the facing and said he had them coming; then afterwards told me the tea was there and wanted to sell them, and it was some time after this that I wrote to Corbin, May & Co. about the matter.

Q. Do you remember whether he was enthusiastic or otherwise about the matter?

A. He seemed to feel good-natured, and said he had something to buck against the Tycoon now.

Cross-examination:

Q. You say you have sold other teas as Tycoon teas and they failed to give satisfaction?

A. Yes, sir.

Q. Did other firms in Battle Creek sell Tycoon teas?

A. I have seen Tycoon teas at Leon and Jennings'.

Q. How many grades of this Tycoon tea do you sell?

A. Four different kinds.

Q. What do they cost you?

A. I can't give you the exact cost of them—about twenty, thirty, and thirty-five cents per pound. The twenty-cent tea is a dust, and we have another one costing twenty cents called Tycoon nibs.

Q. Did you get the price on this so-called Tycoon chop from McSkinin?

A. I did not.

Q. Did you at that time see a sample of the so-called Tycoon chop?

A. I do not think he exhibited a sample of it to me.

173 WILLIAM GAMBLE, a witness produced and sworn for and on the part of the complainant, testified as follows:

Q. State name, age, residence, and occupation.

A. Name, William M. Gamble; thirty-seven years of age; salesman for Corbin, May and Co., of Chicago; and reside in Chicago when at home.

Q. How long have you been a traveling salesman for Corbin, May and Co.?

A. For six years, and previous to that time I had been a retail dealer in that — for seven or eight years.

Q. In your experience in the business of dealing in teas did you ever see or hear of a Japan tea sold under the name of Tycoon or having the word Tycoon prominently on the face of it, except that of Ingram, Corbin and May and Corbin, May and Co.?

A. No, sir.

Q. Over what territory have you traveled in your business?

A. Part of Ohio, all of Michigan, Southern Minnesota, Kansas, Nebraska, and Missouri.

Q. You visit all the principal cities and towns of Michigan, do you not, and are acquainted with the various brands of Japan teas which are sold in the markets, are you not?

A. I am.

Q. Is the brand Tycoon a well-known and popular brand in the market?

A. It is.

Q. How extensively is it sold in the city and towns of Mich.?

A. We have in the neighborhood of one hundred and fifty towns in the State of Michigan where that tea is sold.

Q. What are the names of some of the recognized brands of tea which are sold in the market?

A. The Tycoon, Mikado, Perfection, Can tea, Premium, Favorite, Mayflower, and a number of others.

Q. Are those names which you have given trade-marks of the particular teas sold under them?

A. Makaddo is used as a trade-mark; the others are used indiscriminately.

Q. Has the Tycoon tea been extensively advertised by Corbin, May and Co. and their customers?

A. It has.

Q. What claim, if any, has been made as regards the Tycoon differing from other Japan teas?

A. It is better prepared and strictly pure.

Q. Has that come to be well recognized by dealers and consumers as a fact?

A. It has.

Q. What would be the effect upon the trade of Corbin, May and Co. to have a tea similar in general appearance to the Tycoon tea put upon the market by other parties under the name Tycoon, or a name similar to Tycoon, or Tycoon in connection with the word chop?

A. It would be very damaging. In the first place, we have given
exclusive sale in many towns, furnished advertising matter
174 in the way of printed circulars, explaining the difference and
superiority of the Tycoon tea over other Japans. Our customers have also advertised them in their papers and by other means for several years. The effect of others selling something similar under the name of Tycoon or Tycoon chop would, of course, be detrimental to the retail dealer, as well as to Corbin, May and Co. It has also been drawn and given away at different fairs in Michigan, at expense of both the retailer and Corbin, May and Co.; also samples distributed.

Q. Do you understand that the Tycoon in its various grades differs as to the mode of manufacture and the results obtained on account of its peculiar manufacture from the other uncolored Japan teas which are sold in the market?

A. I do. It is a higher-fired tea than ordinarily used; also strictly pure, where many so called uncolored teas are not.

Q. Have you heard from your customers throughout Michigan of tea having been offered by W. J. Gould and Co., of Detroit, under the name Tycoon chop?

A. I have.

Q. How extensively have Gould and Co. offered the Tycoon chop for sale?

A. I have heard of it in a number of cases in different sections of the State as having been offered to our customers.

Q. What have the customers told you with regard to such offers of Gould and Co.?

A. The first case I met it was at Quincey. When I went there in August our customer told me that he had been offered by W. J. Gould and Co.'s traveling man Tycoon tea, and the chest facing was shown him bearing the brand Tycoon chop. He told Gould's man that it was small business for a wholesale house to try and steal the reputation of another. They were offered on the Lake Shore road by Gould and Co., Michigan Central, and the Detroit, Lansing, and Northern; at the various towns on the line of these roads.

A. Yes, sir.

Q. Did other firms in Battle Creek sell Tycoon teas?

A. I have seen Tycoon teas at Leon and Jennings'.

Q. How many grades of this Tycoon tea do you sell?

A. Four different kinds.

Q. What do they cost you?

A. I can't give you the exact cost of them—about twenty, thirty, and thirty-five cents per pound. The twenty-cent tea is a dust, and we have another one costing twenty cents called Tycoon nibs.

Q. Did you get the price on this so-called Tycoon chop from McSkinin?

A. I did not.

Q. Did you at that time see a sample of the so-called Tycoon chop?

A. I do not think he exhibited a sample of it to me.

173 William Gamble, a witness produced and sworn for and on the part of the complainant, testified as follows;

Q. State name, age, residence, and occupation.

A. Name, William M. Gamble; thirty-seven years of age; salesman for Corbin, May and Co., of Chicago; and reside in Chicago when at home.

Q. How long have you been a traveling salesman for Corbin, May and Co.?

A. For six years, and previous to that time I had been a retail dealer in that — for seven or eight years.

Q. In your experience in the business of dealing in teas did you ever see or hear of a Japan tea sold under the name of Tycoon or having the word Tycoon prominently on the face of it, except that of Ingram, Corbin and May and Corbin, May and Co.?

A. No, sir.

Q. Over what territory have you traveled in your business?

A. Part of Ohio, all of Michigan, Southern Minnesota, Kansas, Nebraska, and Missouri.

Q. You visit all the principal cities and towns of Michigan, do you not, and are acquainted with the various brands of Japan teas which are sold in the markets, are you not?

A. I am.

Q. Is the brand Tycoon a well-known and popular brand in the market?

A. It is.

Q. How extensively is it sold in the city and towns of Mich.?

A. We have in the neighborhood of one hundred and fifty towns in the State of Michigan where that tea is sold.

Q. What are the names of some of the recognized brands of tea which are sold in the market?

A. The Tycoon, Mikado, Perfection, Can tea, Premium, Favorite, Mayflower, and a number of others.

Q. Are those names which you have given trade-marks of the particular teas sold under them?

A. Makaddo is used as a trade-mark; the others are used indiscriminately.

Q. Has the Tycoon tea been extensively advertised by Corbin, May and Co. and their customers?

A. It has.

Q. What claim, if any, has been made as regards the Tycoon differing from other Japan teas?

A. It is better prepared and strictly pure.

Q. Has that come to be well recognized by dealers and consumers as a fact?

A. It has.

Q. What would be the effect upon the trade of Corbin, May and Co. to have a tea similar in general appearance to the Tycoon tea put upon the market by other parties under the name Tycoon, or a name similar to Tycoon, or Tycoon in connection with the word chop?

A. It would be very damaging. In the first place, we have given exclusive sale in many towns, furnished advertising matter
174 in the way of printed circulars, explaining the difference and
superiority of the Tycoon tea over other Japans. Our customers have also advertised them in their papers and by other means for several years. The effect of others selling something similar under the name of Tycoon or Tycoon chop would, of course, be detrimental to the retail dealer, as well as to Corbin, May and Co. It has also been drawn and given away at different fairs in Michigan, at expense of both the retailer and Corbin, May and Co.; also samples distributed.

Q. Do you understand that the Tycoon in its various grades differs as to the mode of manufacture and the results obtained on account of its peculiar manufacture from the other uncolored Japan teas which are sold in the market?

A. I do. It is a higher-fired tea than ordinarily used; also strictly pure, where many so called uncolored teas are not.

Q. Have you heard from your customers throughout Michigan of tea having been offered by W. J. Gould and Co., of Detroit, under the name Tycoon chop?

A. I have.

Q. How extensively have Gould and Co. offered the Tycoon chop for sale?

A. I have heard of it in a number of cases in different sections of the State as having been offered to our customers.

Q. What have the customers told you with regard to such offers of Gould and Co.?

A. The first case I met it was at Quincey. When I went there in August our customer told me that he had been offered by W. J. Gould and Co.'s traveling man Tycoon tea, and the chest facing was shown him bearing the brand Tycoon chop. He told Gould's man that it was small business for a wholesale house to try and steal the reputation of another. They were offered on the Lake Shore road by Gould and Co., Michigan Central, and the Detroit, Lansing, and Northern; at the various towns on the line of these roads.

Q. About how early last summer did Gould and Co. inform the trade that they would offer these teas?

A. It was in July that I heard of it.

Q. They had not then arrived?

A. No, sir.

Q. Did you see advertisements of Gould and Co. notifying the public of a large importation of Tycoon chop teas?

A. I did. I saw it in the Detroit Commercial. It was shown me by several parties. As to how large a circulation the paper has, I do not know. Judging from the advertisements, I should suppose it was a leading paper, containing a number of advertisements of wholesale grocers. I sent a copy of the paper to Corbin, May and Co.

175 Cross-examination:

Q. Have Lamb and Spensor, of Charlotte, and Moulton and Stanley, of Battle Creek, been customers of Corbin and May?

A. Lamb and Spensor had one bill of Tycoon tea. This was about three years ago. Molton and Stanley never bought any goods of us that I am aware of.

Q. You say you sell extensively in Michigan. Do you know what the aggregate of Michigan sales have been?

A. Not exactly so, sir.

Q. Do you sell in Detroit?

A. No, sir.

Q. You are the only traveling man that sells in Michigan, are you not?

A. I am.

Redirect:

Q. Say whether Leon and Jennings, of Battle Creek, sell the Tycoon tea of Corbin, May and Co.

A. They do. They have been doing so about four years.

176 United States Circuit Court for the Eastern District of Michigan.

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*

I, William S. Cobb, notary public and circuit court commissioner in and for the county of Jackson, State of Michigan, do hereby certify that the foregoing depositions of Allen Raymond, George Shekell, Charles Lamb, William H. Hamilton, and William M. Gamble were taken before me, at my office, in the city of Jackson, county of Jackson, State of Michigan, on the tenth day of February, A. D. 1886, on the part of the above-named complainants; that said depositions were taken pursuant to the stipulation hereto annexed, and that the manner of taking the said depositions was as follows, to wit: The said witnesses were first sworn by me to tell the truth, the whole truth, and nothing but the truth relating to the said cause. They were then severally examined by counsel for complainants upon verbal interrogatories propounded to them by counsel for said complainants, and that the said several interrogatories were, with the answer of the said witnesses to each of them severally, carefully written out by me; after which counsel for the said defendants cross-examined the said witnesses in like manner, and the said cross-examination was also carefully written out by me, and that the said parties hereto, by their respective attorneys, by a verbal stipulation, waived signatures to said deposition. I do further certify that at the taking of said depositions George L. Hosmer, Esq., attorney for the defendants in said cause, attended before me and put such interrogatories to the said witnesses as he thought proper.

W. S. COBB,
Circuit Court Commissioner, Jackson County.

177 United States Circuit Court for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*

It is hereby stipulated that the testimony of Allen Raymond and George Shekell, of Battle Creek; Charles Lamb, of Charlotte; and William H. Hamilton, of Jackson, in the State of Michigan, and such other witnesses as may be produced may be taken in the above-entitled cause before any notary public in Jackson, Michigan, beginning on the 10th day of February, 1886, and continued until completed, to be read in evidence at the trial thereof on the part of either of the parties to said cause.

P. L. SHUMAN, *Complainants' Solicitor.*
DICKINSON, THURBER & HOSMER,
Defendants' Solicitors.

Dated Chicago, February 6, 1886.

Endorsed: 2974. United States circuit court for the eastern district of Michigan. In equity. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Depositions of Allen Raymond, George Shekell, Charles Lamb, William H. Hamilton, and William M. Gamble, taken before W. S. Cobb, circuit court commissioner, Jackson county, Mich., on the tenth day of February, A. D. 1886. Received and opened in open court, and filed Feb'y 18, 1886. Walter S. Harsha, clerk.

178 United States Circuit Court for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*

It is hereby stipulated that the testimony of Messrs. Smith, Baker, Morse, and such other witnesses as may be presented may be taken before Edwin F. Corey, a commissioner of the United States, at No. 54, Wall street, New York city, beginning on the 18th day of February, 1886, and continued until completed, said testimony to be read in evidence at the trial of the above-entitled cause on the part of either party thereto.

P. L. SHUMAN, *Complainants' Solicitor.*
DICKINSON, THURBER & HOSMER,
Defendants' Solicitors.

Dated Chicago, February 6, 1886.

179 Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN and Others, Complainants,
against
WALTER J. GOULD and Others, Defendants.

Testimony of Richard B. Smith and William H. Morse, taken before Edwin B. Corey, notary public, at No. 54, Wall street, in the city of New York, on the 19th day of February, 1886, under the stipulation in this action, signed by the solicitors for the respective parties thereto, dated February 6th, 1886.

By the terms of said stipulation said testimony is to be taken before Edwin F. Corey, a United States commissioner; but it now appearing that Mr. Corey is not a United States commissioner, *and* Mr. Charles P. Crosby, appearing for the solicitors of defendants, consents that the testimony may be taken before Edwin F. Corey as notary public, instead of as United States commissioner, as mentioned and set forth in said stipulation, which stipulation is hereto annexed.

RICHARD B. SMITH, a witness called on behalf of the complainants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. SHUMAN:

First interrogatory. What is your name, age, residence, and occupation?

A. My name is Richard B. Smith; my age about 50, I think; my occupation is merchant; and my place of business at present is in New York; I have a house in Japan also.

Second interrogatory. State the character of your business in Japan.

A. Commission business; teas chiefly.

Third interrogatory. Do you know the complainants in this case, Calvin R. Corbin and Horatio N. May?

A. I do.

Fourth interrogatory. How long have you known them?

A. Several years. You mean personally?

Fifth interrogatory. No, sir; in business?

A. In business I have known them about since 1879 or 1878; possibly earlier than that; I have known them since 1878.

Sixth interrogatory. And what has been the nature of your business connection with them?

A. Acting as shipper for their teas in Japan.

Seventh interrogatory. Do you not also fire teas in the course of manufacture in Japan for them?

A. Yes, sir.

Eighth interrogatory. What kind of teas do you fire for them?

A. Japan tea.

Ninth interrogatory. When did you commence this business?

180 A. I think it was as long ago as 1878; possibly earlier than that. I do not remember the exact date, but anyhow 1878, I think, was about the time we began.

Tenth interrogatory. Give a statement of the nature of your business with Corbin, May & Co.

A. Well, we buy tea on order for Corbin, May & Co.

It is now stipulated between Mr. Shuman, solicitor for the complainants, now present, and Mr. Crosby, acting for the solicitor for the defendants, said Crosby being now present, that all the testimony taken before the said Edwin F. Corey herein shall be considered as having been taken under objection by the solicitors for the defendants, said objection now being general, but with the same force and effect as if proper objections had been taken to each and every question asked by the solicitors for the complainants.

Eleventh interrogatory. How are these teas prepared for shipment to the United States?

A. They are bought, in the first place, from the natives or native merchants and refired.

Twelfth interrogatory. If Corbin, May & Co. or Ingraham, Corbin & May have ever given you any specific instructions with regard to the manner of preparing teas for them, you may state what such instructions were in your own way.

A. Yes, sir; they have always given us instructions in regard to a style of preparation — their tea, which instructions have always — followed.

Thirteenth interrogatory. How long have you been in the tea-preparing business in Japan?

A. The last time that I went to Japan was in 1878.

Fourteenth interrogatory. That was when you established your house there?

A. No; the house was established there a number of years previously.

Fifteenth interrogatory. That is what I mean. How long has your house been in that business there?

A. Since 1868.

Sixteenth interrogatory. Do you prepare the teas that are bought for Corbin, May & Co. and shipped to them in a different manner, according to the instructions given, than Japan teas are ordinarily prepared for shipment to the United States?

A. I do—that is, we follow their instructions in preparing their tea.

Seventeenth interrogatory. Have Corbin, May & Co. adopted any particular name by which the teas so prepared by you have been known and called?

A. Any particular brand?

Eighteenth interrogatory. Any particular name or brand?

A. Well, I do not know that their teas have ever been called by any particular name. They have adopted a brand for their tea, which they call the "Tycoon."

Nineteenth interrogatory. When did they adopt this name as the trade-mark or trade name of their teas, if you know?

A. I think at the very first, or, at any rate, very soon after their
first shipment. I am not quite sure whether their first ship-
181 ment was made as "Tycoon" tea or not. I am under the
impression that it was.

Twentieth interrogatory. That would be about the year 1878 or 1879?

A. In 1878, I think it is.

Twenty-first interrogatory. Has the use of that name been continuous by Corbin, May & Co., as applied to teas so manufactured and shipped by you?

A. It has.

Twenty-second interrogatory. Do you know of any other teas which are prepared in the same way and manner for shipment to the United States?

A. Similar teas are prepared and shipped to the United States.

Twenty-third interrogatory. What do you know of any other teas that are prepared in the same way?

A. No, sir; not any prepared precisely the same way—that is, teas are not prepared in accordance with instructions such as we get from Corbin, May & Co.

Twenty-fourth interrogatory. Now, do you know of any other teas which you ship from Japan, prepared in a similar way, which are called "Tycoon" teas?

A. I do not.

Twenty-fifth interrogatory. About how many grades of "Tycoon" tea do Corbin, May & Co. make?

A. Well, there are several grades. I could not state the number at the present time?

Twenty-sixth interrogatory. What has been the practice with regard to the preparation of teas which are called "Tycoon" teas as to uniformity throughout the grades?

A. Well, the endeavor has been to keep the different grades as near uniform as possible under instructions from Messrs. Corbin, May & Co.—that is, they order on standards of a previous season always, and their instructions are always to keep the teas fully up to that standard.

Twenty-seventh interrogatory. You may describe these teas which are made by you for Corbin, May & Co., and which are called "Tycoon" teas, as to their being adulterated, faced, or colored in any way.

A. Well, there is no adulteration whatever.

Twenty-eighth interrogatory. Is there any coloring matter or facing or anything of that kind put on them?

A. None whatever.

Twenty-ninth interrogatory. And they are what may be called absolutely pure, uncolored Japan teas?

A. They are.

Thirtieth interrogatory. Do you know of teas which are imported at San Francisco and upon which the name "Tycoon" has been used on the facing within the last five or six years, Mr. Smith?

A. No, sir; I do not remember of any teas marked "Tycoon" teas in San Francisco. It is not impossible that "Tycoon" tea may have been shipped there, however, but I do not remember any.

Thirty-first interrogatory. Do you remember whether Corbin, May & Co. have registered this name "Tycoon" and claimed it as a trade-mark?

182 A. Well, yes; I do know it, so far as they told me so, and I have seen the certificate of registry.

Thirty-second interrogatory. When was this fact brought to your notice first?

A. That they had registered it?

Thirty-third interrogatory. Yes.

A. I think it was in 1882; I would not be certain of the year 1882; I think it was, though; not later than 1883.

Thirty-fourth interrogatory. Has that name been treated by you and respected as the exclusive trade-mark of Corbin, May & Co. since you were advised of its having been registered?

A. With their teas it has been, and I do not think we have ever shipped any other "Tycoon" brand at all. I make that statement because there is a possibility of my having shipped some "Tycoon" tea to San Francisco, but I do not think we have.

Thirty-fifth interrogatory. If the word "Tycoon" has been used upon any Japan teas, were those teas manufactured in the same manner and would they be called identical with the teas of Corbin, May & Co. or not?

A. No; they would not. Such teas are never shipped to San Francisco.

Thirty-sixth interrogatory. Such teas as Corbin, May & Co. make, you mean?

A. No, sir; they are never shipped there—not in my experience.

Thirty-seventh interrogatory. In what respect do these teas differ from the ordinary Japan teas of commerce?

A. Well, as I have stated, they are strictly pure tea.

Thirty-eighth interrogatory. Well, is not the tea different in the mode of preparation as to which you refer?

A. Yes, sir; the mode of preparation, and they are prepared in accordance with Mr. Corbin's ideas as to what the tea should be. We follow his instructions.

Thirty-ninth interrogatory. What general directions were given by Mr. Corbin at the time they adopted this name and style of manufacture of teas, Mr. Smith?

A. The instructions were to prepare their teas without any coloring or addition of any injurious matter, to have the teas pure. They wanted to create a demand for such teas—that is, a demand for pure teas—and in order to do that they required to use, as far as possible, a uniform quality.

Fortieth interrogatory. Had strictly colored Japan teas been generally sold in the markets of the United States at the time these instructions were first given by Mr. Corbin?

A. No, sir; not generally. Undoubtedly some teas may have come here, but not as a general thing.

Forty-first interrogatory. Is it not a fact that the practice in the matter of preparing Japan teas at that time was to color them so as to have them resemble China teas as much as possible?

A. Well, I think that was the original intention in coloring Japan teas, was to bring about a resemblance between them and China grades, which in the early stages of the Japan tea business were in demand and scarce.

Forty-second interrogatory. Is it not a fact that Mr. Corbin, in
his instructions to you from time to time, insisted on the
183 manufacture of these teas to a uniform standard from year
to year?

A. Yes, sir; to make grades that they designated. For instance, it was their intention to have their teas uniform, grade by grade.

Forty-third interrogatory. Did that involve, according to their instructions, the making of a substantially different tea from that which was originally sold in the market?

A. Yes, sir. You are speaking now when they originated this business?

Forty-fourth interrogatory. Yes, sir.

A. Yes, sir.

Forty-fifth interrogatory. And has that been the understanding with regard to the manufacture of the "Tycoon" teas since that time?

A. That it should be kept uniform as to quality?

Forty-sixth interrogatory. Yes.

A. Yes, sir; it has been the understanding.

Forty-seventh interrogatory. Do you know whether this "Tycoon" tea has or has not become popular in the market, as sold by Corbin, May & Co.?

A. I so understand. I have every reason to believe it without my personal knowledge.

Forty-eighth interrogatory. What is the annual importation by Corbin, May & Co. in chests, say?

A. Well, I think the last year has been upwards of 6,000 packages. I have forgotten the exact quantity.

Forty-ninth interrogatory. About how many pounds to the package?

A. Well, they would average above 70 pounds, I think.

Fiftieth interrogatory. And about what value would you say, in round dollars, for the year?

A. Well, it would require figuring.

Fifty-first interrogatory. Well, in round figures; over one hundred thousand dollars?

A. Oh, yes, sir; over $100,000; certainly over. Well, between $100,000, $150,000—say between $130,000 and $140,000.

Fifty-second interrogatory. Will you state to the court, from your knowledge of the business, whether it is usual in Japan, among tea makers or shippers, to use or select the brands or marks under which the teas are finally imported?

A. Well, it very frequently happens that such is the case; that shippers there, when it is left optional with them, providing they have no specific directions to the contrary, they adopt some mark of their own originally.

Fifty-third interrogatory. Have you any knowledge of any persons doing business in the United States with Japan, other than Corbin, May & Co., having selected or ordered teas shipped under the name of "Tycoon" to the United States?

A. I have not, except in the matter of Gould, and that is only hearsay. I do not know it positively. You mean since Corbin, May & Co. adopted this "Tycoon" brand?

Fifty-fourth interrogatory. Yes.

A. No, sir.

184 Fifty-fifth interrogatory. Have you any knowledge as to whether this word "Tycoon" was or was not a common brand in use in the United States prior to 1878?

A. I have no positive knowledge in regard to that word. It is quite possible we ourselves may have shipped a "Tycoon" brand, but I don't remember having done it, however.

Fifty-sixth interrogatory. If you did was any point made of it in the way of using that mark upon any particular manufacture of tea?

A. There is no impression on my memory to that effect. I do not remember that that was ever used with that intention.

Fifth-seventh interrogatory. If such was the fact would you be likely to have it in your memory?

A. I should think so; yes, sir; undoubtedly.

Fifty-eighth interrogatory. Are you acquainted with the names or the brands under which Japan teas are sold in the markets of the United States generally, Mr. Smith?

A. In a general way I am; yes, sir.

Fifty-ninth interrogatory. Now, from your knowledge of the business, what would you say as to the existence of the word "Tycoon" upon teas since 1879 in the markets of the United States, say east of the Rocky Mountains?

A. I do not remember a single package of it shipped under that brand since that time—that is, I have no personal knowledge of any shipped.

By Mr. CROSBY:

Sixtieth interrogatory. You mean shipped from Japan?

A. Shipped from Japan.

Cross-examined by Mr. CROSBY:

First cross-interrogatory. Mr. Smith, will you kindly explain precisely what is done to the teas that you ship to these complainants on your receiving them in New York and before you ship them to the complainants.

A. We do not receive them at all. They go direct to Corbin, May & Co.

Second cross-interrogatory. They don't pass through your hands?

A. No, sir; not here; not in this country.

Third cross-interrogatory. In other words, packages come from Japan consigned to Corbin, May & Co.?

A. Consigned under their letters of credit.

Fourth cross-interrogatory. Consigned directly to them?

A. Not all directly to them; it would depend upon the provisions of the letter of credit; they issue letters of credit in regard to these teas.

Fifth cross-interrogatory. When the packages are shipped from Japan are they opened from the time they are shipped from Japan until they are opened by Corbin, May & Co.?

A. Not that I am aware of.

185 Sixth cross-interrogatory. They are not opened by you?

A. No, sir; we have nothing more to do with them after they are placed on board ship at Japan.

Seventh cross-interrogatory. Then, what is called preparing or fixing these teas is done in Japan under instructions issued by you here?

A. Under instructions issued by Corbin, May & Co. in Chicago to us in Japan. They send us our orders direct to Japan.

Eighth cross-interrogatory. You have a house in Japan?

A. Yes, sir; we have a house in Japan.

Ninth cross-interrogatory. And whatever preparation is done is done by directions from Corbin, May & Co.?

A. Yes, sir; to Smith, Baker & Co., in Japan.

Tenth cross-interrogatory. According to your best knowledge or recollection, about how many houses are there in the city of New York engaged in the importing of teas?

A. I could not say; there are a great many of them now.

Eleventh cross-interrogatory. There are a great many of them now?

A. Yes, sir.

Twelfth cross-interrogatory. And there are a great many houses in the West which import directly?

A. Yes, sir; teas are imported all over the country.

Thirteenth cross-interrogatory. Teas are imported in San Francisco and Chicago?

A. Yes, sir.

Fourteenth cross-interrogatory. And in Detroit?

A. Yes, sir; and various other places in the country.

Fifteenth cross-interrogatory. Now, have you any personal knowledge as to the directions given by the complainants to your house in Japan?

A. I have.

Sixteenth cross-interrogatory. Anything more than their general instructions?

A. Well, instructions which always accompany their orders for teas.

Seventeenth cross-interrogatory. Which are the most valuable, Mr. Smith, as a general proposition—the Japan teas or the China teas?

A. It depends upon the grade entirely.

Eighteenth cross-interrogatory. The Japan teas are just as good as China teas if they are as far up in grade?

—. Yes, sir.

Nineteenth cross-interrogatory. When did you first hear of the word "Tycoon" as applied to teas as a brand or trade-mark?

A. I do not remember any prior to our shipment to Corbin, May & Co.; but it is quite possible that we may ourselves have used that brand for shipment to San Francisco, but I have no record here whether we have or not.

Twentieth cross-interrogatory. Have you ever heard of the use of that word among tea merchants since the shipments to Corbin, May & Co. commenced?

A. I have not, except in the case of Gould, which I have only heard of.

186 WILLIAM H. MORSE, called on behalf of the complainants, and being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. SHUMAN:

First interrogatory. What is your name, age, residence, and occupation?

A. My name is William H. Morse; I have a business in Japan and an agency in New York; my age is 46.

Second interrogatory. You are the resident member of the house of Smith, Baker & Co. in Japan?

A. Yes, sir.

Third interrogatory. At what city?

A. Well, my office is in New York and I live in Tarrytown.

Fourth interrogatory. What I meant was whether your residence is in Japan?

A. I have lived in Japan 25 years, off and on.

Fifth interrogatory. Did you live in Japan at the time this word "Tycoon" was adopted by Corbin, May & Co. for use upon their teas?

A. No, sir; I was away from Japan at that time, travelling through India and Europe, but I know of the fact of the shipment being made to them and of their adopting that brand. I left Japan at the end of 1878, as near as my recollection now serves me, and that I was living at Kobe. We have two houses in Japan—one at Yokahama and one at Kobe. It might have been at the end of 1877 or the beginning of 1878, I am not quite sure, when we first commenced to do business with them.

Sixth interrogatory. Has it been the practice of your house in Japan to buy the tea in the natural leaf under orders specially for this house of Corbin, May & Co.?

A. Yes, sir.

Seventh interrogatory. Will you state what has been the general practice, under their instructions, in regard to preparing their teas so as to be different from the ordinary Japan teas of commerce?

A. In the first place, they never wanted any colors used on their teas and required us to prepare them as they specially directed, and we have always followed their directions.

Eighth interrogatory. The growth of the business of sending uncolored Japan teas to the United States has been steady, has it not, since 1878 and 1879—there has been a steady increase in that business?

A. Well, there was a time in Japan, in the early days, when the first shipments were made, in 1860, and after that, when there was not any coloring matter used, but they were fired in a very crude and rough way, and they were shipped to England, and then came over to America. The Japan teas more closely resemble the "Moyune" teas, and that was what made them first generally popular in the United States—because they were cheaper than the China teas—and they went into general consumption; and after awhile a
187 great proportion of the teas were colored, as they are to this
day—prepared with coloring matter. Then people got to talking about the objection to any foreign substance being put on the teas, and so Mr. Corbin wanted a pure article and he got it.

Ninth interrogatory. It was a new departure for them in the business at that time?

A. Yes, sir; exactly.

Tenth interrogatory. Have their importations increased from year to year in that business?

A. I think there has been an increase.

Eleventh interrogatory. Do you know whether those teas have the reputation of being popular in the market?

A. I think, from what I hear, that they are.

Twelfth interrogatory. In what respect do they differ from the ordinary teas as to the "firing"—I mean as to degree or grade of "firing," or whatever term you use in that connection?

A. Well, you know all teas are manipulated in a different manner. All people do not think alike on the preparation of teas.

Thirteenth interrogatory. What do you mean by the word "firing" in the business?

A. Why, the teas are put in a pan over a charcoal fire and stirred with the hand.

Fourteenth interrogatory. That is part of the process of manufacture of the teas for commerce?

A. Precisely.

Fifteenth interrogatory. Now, what is your knowledge as to the "Tycoon" teas of Corbin, May & Co. having retained, during the years from 1879 up to the present time, a uniform style of manufacture?

A. My knowledge of that is that they adopted certain standards which we have always followed.

Sixteenth interrogatory. They have remained the same during these years?

A. Yes, sir.

Seventeenth interrogatory. So that the teas which they now import are substantially the teas which they originally ordered?

A. Precisely.

Eighteenth interrogatory. Have you any knowledge of the word "Tycoon" being used as a trade-mark by anybody else than by Corbin, May & Co. upon Japan teas?

A. I have not, except in this case of Mr. Gould.

Nineteenth interrogatory. If that name were a common name upon Japan teas would you or would you not know it?

A. I should have been likely to have heard it in my travels about.

Twentieth interrogatory. Do you know whether any teas prepared in the same way as Corbin, May & Co.'s teas are prepared by you are imported at the port of San Francisco under the same name?

A. I do not, and don't think there are any.

Twenty-first interrogatory. You don't think there are any?

A. No; I do not.

Twenty-second interrogatory. This kind of teas are not such as are ordinarily sold in the San Francisco market, are they?

188 A. In the San Francisco market the teas are very different, as a general rule, than those used here.

Twenty-third interrogatory. And the teas themselves are generally different?

A. The natural-leaf tea is, of course, the same in Japan and all over, but they take a lower grade of teas there, and they are manipulated very different.

Twenty-fourth interrogatory. What I meant was this, Mr. Morse, that the teas as they are finally prepared for the customers differ from the teas used in the Eastern market?

A. Yes, sir; you might say that the teas this side of the Rocky Mountains are different.

Signatures of both witnesses waived.

189 UNITED STATES OF AMERICA,
State of New York, City and County of New York:

I, Edwin F. Corey, a notary public of the State of New York, duly commissioned and qualified, and residing in the city of New York, do hereby certify that, on the day of the date hereof, before me appeared Richard B. Smith and William H. Morse, who, having been by me severally and duly sworn to testify to the truth, the whole truth, and nothing but the truth, so far as they should be interrogated, in the aforesaid matter, gave the depositions hereinbefore set forth.

The foregoing testimony was taken pursuant to the stipulation hereto attached, dated Chicago, February 6th, 1886, between P. L. Shuman and Dickinson, Thurber & Hosmer, and the agreement between Mr. Shuman and Charles P. Crosby aforesaid.

It was taken at my office, No. 54 Wall St., in the city and county of New York, beginning on the 18th day of February and concluding on the 19th day of February, 1886.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

EDWIN F. COREY,
Notary Public.

[SEAL.]

And I further certify that the fee for taking said depositions, including the fees of the stenographer, $33.00, has been paid to me by P. L. Shuman, Esq., counsel for complainant, and that the same is just and reasonable.

EDWIN F. COREY,
Notary Public.

190 In the Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN *et al.*, Complainants,
vs
WALTER J. GOULD *et al.*, Defendants.

STATE OF ILLINOIS, } *ss:*
Cook County,

Be it remembered that on this 6th day of February, A. D. 1886, personally appeared before me, James Hewitt, a notary public in and for the county of Cook and State of Illinois, Winslow Wright to testify on the part of the defendants in the above-entitled cause.

And the said Winslow Wright, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

191 Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

It is hereby stipulated that the testimony of Winslow Wright may be taken on behalf of the defendants at the office of P. L. Shuman, Chicago, Illinois, on the sixth day of February, A. D. 1886, at 3.30 in the afternoon, and may be read in evidence in the cause on behalf of said defendants.

Feb. 6, 1886.

P. L. SHUMAN,
Comp. Solicitor.

Winslow Wright, produced as a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. **Hosmer**, and testified as follows:

Q. State, if you please, your name, age, residence, and occupation.

A. Winslow Wright; residence, Chicago; age, forty; occupation, tea salesman.

Q. State, if you please, how long you have been in the tea business.

A. Since 1865.

Q. State if you ever heard the word "Tycoon" as applied to a brand of tea; if so, under what circumstances.

A. Well, in answering that question, may I answer it a little bit fully?

Q. Yes.

A. That is to say, I have sold teas with the name "Tycoon" on them; I sold them in Detroit and sold them in Milwaukee and sold them in Chicago.

Q. When?

A. Well, in what we call the tea season of 1871–'2; our seasons don't run from January to January.

Q. I suppose, then, you sold to the jobbers?

A. Yes, sir.

Q. And they were distributed over those States by the jobbers to the retailers?

A. Well, we sold them to jobbers in Detroit, and we have sold them in Milwaukee, and we have sold them in Chicago, and I suppose they distributed them.

Q. Did you sell that brand or name of tea in other States?

A. That I could not say; but those were my own personal sales.

Q. Did you sell as principal or agent?

A. As agent.

192 Q. By whom were you employed at that time?

A. Ezra Wheeler & Company, of New York.

Q. And this word "Tycoon" was upon the facing of the tea?

A. It was upon the facing as we sold them from here. We had a distributing point from here.

Cross-examination waived.

Signature of the witness waived by agreement of counsel.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, James Hewitt, a notary public in and for the county of Cook, State of Illinois, do hereby certify that on the 6th day of February, A. D. 1886, by agreement of counsel, per stipulation hereto annexed, personally appeared before me, at the office of P. L. Shuman, Esq., Chicago, Illinois, Winslow Wright to testify on the behalf of the defendants in a certain cause now pending in the circuit court of the United States for the eastern district of Michigan, wherein

Calvin R. Corbin *et al.* are complainants and Walter J. Gould *et al.* defendants.

And I do hereby further certify that the aforesaid witness was first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid as far as he should be interrogated, and that the testimony of said witness was reduced by me to writing and the signature of the witness thereto was waived by agreement of counsel.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 8th day of February, 1886.

JAMES HEWITT,
[SEAL.] *Notary Public.*

Endorsed: 2974. In *re* Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Deposition of Winslow Wright. Received by mail. Opened in open court Feb'y 9, 1886. Walter S. Harsha, clerk.

Notice of receipt hereof by clerk accepted.

DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

193 Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective counsel, that the evidence of such of defendants' witnesses as may be produced before Herschel Whitaker, a U. S. commissioner, on the 27th day of February, 1886, may be taken by him, and that their depositions so taken may be read upon the hearing of said cause with the same force and effect as though taken upon due notice before an examiner appointed by the court.

It is further stipulated that the signing of the depositions by the witnesses shall be waived.

P. L. SHUMAN, *Compl'ts' Solicitor.*
DICKINSON, THURBER AND HOSMER,
Def'ts' Sol'rs.

Appearances: Mr. Percy L. Shuman, solicitor for complainants; Mr. George S. Hosmer, solicitor for defendants.

194 CHARLES M. GARRISON, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

Examined by Mr. HOSMER:

Q. You have been, I believe, in the grocery business?
A. Yes, sir.
Q. For how many years in your life?

A. In the neighborhood of twenty-five.

Q. How old are you at present?

A. I am 48.

Q. And I suppose you are as familiar as a wholesale grocer would be with teas used in this section of the country?

A. Yes, sir.

Q. What has been your residence during this time?

A. All the time in the city of Detroit, Michigan.

Q. State what, if any, knowledge you have with reference to the word "Tycoon" as applied to teas and Japan teas.

A. It is a name that has been commonly used on Japan teas ever since I can remember—a very few years after they first appeared in this country.

Q. How far back can you say?

A. I should say for twenty years back.

Q. I suppose you were in the grocery business at that time—twenty years ago?

A. Yes, sir.

Q. What was the name "Tycoon," as applied to teas and Japan teas, as to being a common term at that time?

A. It was not what you might call a common term as long ago as that, because the first Japan teas imported were a kind of nondescript tea in this country. Afterwards, in getting different grades, they began to classify them and give them these distinctive names: Spring Packings, Silver Leaf, and Tycoon, and fancy names of that description.

Q. Then you yourself sold these Tycoon teas?

A. Yes, sir; I had facings made for them.

Q. How long ago was that?

A. That was in 1870.

Q. And the term was a common term for those teas at that time?

A. Yes, sir.

Q. Where did you obtain your teas?

A. I purchased them of that name in New York, and also in San Francisco and Boston.

Cross-examination — Mr. SHUMAN:

Q. From whom did you purchase your teas in Boston with this name "Tycoon" upon them?

A. It would be hard to designate. I purchased a good many teas of Israel, Nash & Co.

Q. Are you certain you got any from Israel, Nash & Co. with the name of "Tycoon" on them?

195 A. I would not be positive.

Q. Do you know anybody you purchased from in Boston with the name "Tycoon" on the facing?

A. A house in San Francisco——

Q. Let us confine this to Boston.

A. I don't remember; I think I bought teas of Israel, Nash & Co. with the name Tycoon on.

Q. In what years?

A. I think I would be safe in saying 1871.

Q. In 1871?

A. Yes, sir.

Q. Do you think it might not have been in 1870?

A. I think probably I bought some in 1870 also.

Q. Do you think you bought in 1870 of Israel, Nash & Co.?

A. Yes, sir.

Q. Do you think you did in 1873?

A. I think it is very probable.

Q. Do you think you did in 1874?

A. Well, no; I would not say I did.

Q. You don't think you have bought any, then, since 1873?

A. Since 1872 or 1873 from that firm.

Q. Are they still in existence as a tea-house in Boston?

A. Their successors are.

Q. What is their successor's name?

A. The last I heard it was Flint, Boardman & Nash.

Q. Do you know when Israel, Nash & Co. went out of business and were succeeded by this firm of Flint, Boardman and Nash?

A. I think it was in 1874 or '5; somewheres along there; I am not positive.

Q. Who did you buy teas of in San Francisco with the name "Tycoon" upon them?

A. I cannot recollect the firm's name.

Q. Have you any means of refreshing your memory?

A. Yes, sir; I could. I only bought one invoice of them.

Q. In what year?

A. That I would not be positive. I think it was prior to 1870—1869 or 1870.

Q. Where did you sell these teas?

A. I sold them through this State.

Q. You are located here in Detroit?

A. Yes, sir.

Q. Have you any recollection of seeing any teas marked "Tycoon," other than those Ingraham, Corbin & May or Corbin, May & Co. and these defendants marked "Tycoon" tea, since you purchased your last lot from Israel, Nash & Co.?

A. Why, yes; I have seen them very frequently. I have seen the name "Tycoon" on chests and I have had facings made myself?

Q. Since that time?

A. Yes.

Q. Who furnished you the teas?

A. I bought the teas of Donohue & Sons, in New York.

Q. And they faced them for you?

A. No; I had the facings made myself.

Q. Where were they put on?

A. In New York.

196 Q. By Donohue & Co.?

A. No, sir; by a tea-packer.

Q. What was his name?

A. I have forgotten his name; an old tea-house there; he faced them.

Q. In what year was that?

A. That was along in 1870 or 1871.

Q. You are certain it was not any time before that?

A. Oh, I may have had some before that.

Q. No; I am speaking of this lot you got facings for.

A. No; I would not say it was before or after; it was along in there; I was buying teas constantly all the time in large lots.

Q. You would locate it in the year 1870 or 1871?

A. I would not without some reference to refresh my memory.

Q. How could you refresh your memory?

A. By referring to my books.

Q. Will you refer to your books?

A. I am out of business, and I guess it would take some little time. I could find it.

Q. I would like to have you fix this time.

Mr. **Hosmer**:

Q. When did you go out of business?

A. In 1878.

Q. So you have not bought any teas since 1878?

A. Yes, sir.

Mr. **Shuman**: Can you give me an idea of the year or place, a bracket of years, in which I will be able to ascertain from Donohue & Co. whether or not they faced teas with "Tycoon" for you?

A. Well, the teas I bought were chests that were stained—were what they called stained chests—and I sent them to them and had them colored and packed in jars and faced with "Tycoon;" that is the way the first teas came were called "Tycoon" teas; Tycoon in jars, they were called. I had the jars procured in New York; afterwards Green & Wattles, brokers, sold lots of them.

Q. Where were they located?

A. At the corner of Wall St. and Front.

Q. In New York?

A. Yes, sir.

Q. In what year did they sell those?

A. It was *in* along in 1869 to 1872.

Q. Do you know what kinds of teas they were?

A. They were a fine Japan tea.

Q. Do you know whether they were colored or uncolored teas?

A. They were colored teas.

Q. They were colored teas?

A. They were colored then; yes.

197 Redirect — Mr. **Hosmer**:

Witness: I could state that there were names that were more popular at that time; for instance, the Benefactor, referring to the ship Benefactor, in which they were brought over; and there were a great many teas coming from Japan from which the mats would be taken and the word Benefactor placed on the outside.

Q. That is the name of the ship they were first brought over in by Low & Co.?

A. Yes, sir; and they afterwards got an injunction prohibiting anybody from using the word Benefactor on teas.

Recross:

Q. Isn't it likely some of those teas were marked "Tycoon" in the same way the word Benefactor was applied to teas?

A. If I am not mistaken the word "Tycoon" would frequently occur upon the facing of a tea. For instance, the word Benefactor would be in large letters, and then in small letters, "finest Tycoon Japan teas" or "finest spring pickings." I can remember the names were used in that way on a great many teas, while the prominent name would be Benefactor or whatever the name of the vessel was.

198 **William C. House**, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

Examined by Mr. **Hosmer**:

Q. What is your age and residence?

A. My residence is Detroit; my age is 48.

Q. You have been in the grocery businesss, haven't you?

A. Yes, sir.

Q. During what period of your life were you so engaged?

A. About fifteen years.

Q. During what years; along about what time?

A. Along from 1868 up to about seven years ago.

Q. During that time you were familiar with the teas that were in this market, were you not?

A. I was; yes, sir.

Q. What were commonly sold?

A. Yes.

Q. What can you say with reference to the use of the word "Tycoon" as applied to teas?

A. I would state that I have seen the word used on teas during the time I was selling them, and I think the first I ever bought, I think, was in the shape of a package of five pounds; also a little jar of teas.

Q. Just describe, if you will, how the word "Tycoon" was used with reference to the facing of those jars or chests.

A. Very frequently the name of the vessel would be on the top; the words "fine Tycoon sun-dried teas" would be under it, but the word "Tycoon" would be upon it.

Q. Was the word "Tycoon" in common use at that time?

A. Yes, sir. I used to see it. It was common to Japan teas.

Q. Had it any special significance that you know of?

A. It was merely the brand of a fine tea. I did not value the name particularly. I should not in buying it from that name. It would not influence me any.

Q. Did it have any special significance, such as the words Young Hyson, Gunpowder, or such names would have?

A. I never saw it upon anything but Japan tea; always in connection with Jap tea.

Q. How long a time did that continue, if you can state?

A. Up to the time I quit the business; and I have seen it since, but I never gave it any particular thought.

Q. You say you have seen it since. When; can you rembember?

A. In visiting places of business I have seen the word "Tycoon" both in the country and in the city here.

Q. Where in the city?

A. Nothing further than this: That I would be in a store and there would be a large pile of Japan teas stacked up, and I would see the word "Tycoon." I saw some up on Grand River avenue the other day. I saw they were handsomely put up, but I did not notice particularly where they came from; whose teas they were.

199 Q. The word "Tycoon" was upon it?

A. Yes, sir.

Cross-examination — Mr. SHUMAN:

Q. Where was this place on Grand River Ave.?

A. I think Earnleys & Young's. They bought them in Chicago.

Q. Where is this place?

A. Near the corner of High——.

Q. It is in Detroit, is it?

A. Yes, sir.

Q. On the corner of High and Grand River?

A. Yes; I saw quite a pile on the counter. They said they had imported them direct, but through some house. Some Chicago house had control of the crop, as I understood it.

Q. How long ago was that?

A. A couple of weeks ago.

Q. You have known of any particular house that used the word "Tycoon" or claimed that word as a brand or trade-mark while you were in the business, did you?

A. I did not.

Q. Do you know whether the tea which was marked Tycoon at that time was or was not an uncolored tea?

A. I think the first tea which I had was an uncolored tea.

Q. How long ago was that?

A. I should say 1868 or 1869; somewhere along there. It was a grey tea. It was not strictly like the old first chop teas we got. They were very dark at first, and then they got to lightening them up, and they became this very light silver-leaf tea. I think the dark tea was the first tea I bought with the word "Tycoon" upon it. My impression is the first tea I purchased was in these large jars.

Q. You have not noticed that word, except in this instance you speak of in Detroit, since you went out of business?

A. Not particularly. I have seen the word "Tycoon" on teas here down-town, I think.

Q. You don't know whose tea it might have been?

A. No, sir; I could not say. I have seen it marked that and packed by different parties. I never heard it was copyrighted in any way. The brand never was given to understand that any one concern had the full control of that chop.

Q. What is the meaning of the word "chop?"

A. I suppose that particular chop of tea, or fineness of tea; they use the word chop as a descriptive word.

Q. They use it the same as the word "clip" is used for wool?

A. I suppose so.

Q. Or crop for tobacco.

A. That is, the season's crop was known to be extra fine.

Q. It is a common term in the China tea trade, isn't it?

A. I couldn't say. I have heard it used in the tea trade all my life. Expert men use it in their conversation.

200 Redirect:

Q. You have not had your attention especially directed to teas since you went out of the business, have you?

A. No, sir.

WALTER J. GOULD, the defendant, sworn in his own behalf.

Examined by Mr. HOSMER:

Q. How long have you been in the grocery business?

A. Twenty-two years as wholesaler.

Q. You are one of the defendants in this case?

A. I am; yes, sir.

Q. You have been familiar with the various brands of teas which have been sold in the Detroit market for the 22 years in which you have been engaged in business?

A. Yes, sir.

Q. And have yourself sold teas very largely?

A. Yes, sir.

Q. And you have had 22 years' experience and have handled large amounts of teas?

A. Yes, sir; in fact, longer than that, but as a jobber 22 years.

Q. What has been the name and style of your different firms?

A. Gould & Fellers, W. J. Gould alone, and from 1880 W. J. Gould & Co.

Q. Will you state what knowledge you have of the use of the word "Tycoon" as applied to teas?

A. It is applied as a brand; that is all; as a fancy name; for instance, Mikado, Tycoon, or Strawberry; something of that kind—Humming-Bird, Peacock.

Q. Has it become a common name?

A. I think it has; yes, sir.

Q. Will you state such instances as you now recall in which the word "Tycoon" has been applied to teas, to your own knowledge?

A. Of my own knowledge I could not say, only as to one case—that is, in 1867 or 1868. It was such an instance as has been spoken of here with regard to the Benefactor. The name of the vessel was the Lenessel. The word Lenessel was on top and underneath it was Tycoon Japan tea.

Q. You sold those teas?

A. Yes, sir; I sold those teas.

Q. Yourself?

A. Yes, sir; Gould & Fellers.

Q. The firm of which you were a member?

A. Yes, sir.

Q. Have you recently purchased two packages of Tycoon tea?

A. Yes, sir.

Q. These are the packages, are they not (producing two chests)?

A. Yes, sir.

Defendants' solicitor offers in evidence the two chests of tea identified by witness, and they are marked Exhibits A and B, respectively.

Q. From whom did you obtain those packages?

201 A. One from Levi & Co.; the other from Kogel & Simon.

Q. By whom were they purchased for you?

A. By Mr. Ballou.

Q. Are these the bills?

A. Those are the invoices which I received by mail.

Defendants' solicitor offers in evidence the invoices marked Exhibits C and D, and they are hereto annexed.

Q. At the time you speak of, when you sold the Tycoon tea, was the name Tycoon common?

A. I think it was—that is, it had been used more or less with Japan teas.

Q. And was applied solely, I believe, to Japan teas?

A. I would not swear to that on my own personal knowledge. Maybe I have heard it applied to Young Hysons. I could not swear positively as to that. Of my own knowledge I don't know.

Q. Will you state the circumstances in full which led — your ordering "Tycoon chops," which you sold during last season?

A. Mr. Ballou came in and solicited an order for teas.

Q. State who Mr. Ballou is.

A. He is a traveling man for C. P. Lowe & Co., of San Francisco.

Q. Now state the whole circumstances.

A. He showed me different labels like this; this is Oceanic. He showed me that and I said, That is a very handsome label, and I told him I will take about 350 packages of the tea; and he showed me another label and I said, That is a very nice label. The word "favorite" was right in the circle. I said, That is also a very nice-looking label, and right in here was the word "chop," just exactly similar to this label. I said, That is a very nice label also. Well, he said, that word is sold in St. Louis, but said, It won't conflict with you at all. I said, I don't want anybody's else label at all, and several names were suggested, and Mr. Spooner was there also, and probably Mr. Spooner will be in this case to corroborate this talk, because he heard it and he suggested several names. I was busy around there, and finally he spoke about Tycoon, and laughingly I said, All right, call it the big Tycoon. I said, Make a hundred chests, leaving the word chop in there, and put in the word "Tycoon" instead of the word "favorite." I said, I will take a hundred of Tycoon and 250 branded Oceanic. That was the whole sum and substance of that, and he sold them to me for C. D. Lowe & Co. and the teas came.

Q. Had you seen at that time or ever heard of the Tycoon tea sold by Ingraham, Corbin & May or by their successors, Corbin & May?

Q. I never had heard of it; if I had it had escaped my memory. I never saw any until the 8th day of October, when I went out to Jackson and saw it.

Q. You saw it at Mr. Hamilton's?

A. Yes, sir.

Q. You never saw it before?

A. Never saw it before I saw it in Hamilton's store. Oh, yes; I did hear before I saw the label. I heard from Frank Davis after I got my label.

Q. After you got your teas?

A. Yes, sir.

Q. He told you they had a Tycoon tea?

202 A. Yes, sir.

Q. But that is all you had ever heard of it?

A. That is all I ever heard of it.

Q. Is that the invoice of C. P. Lowe & Co. (showing a paper to witness)?

A. That is one of them. We receive them in duplicates. Yes, sir; that is the invoice.

Q. That embraces all the Tycoon teas?

A. Yes, sir; this is the original invoice.

Q. That embraces the teas purchased by you and branded Tycoon?

A. Yes, sir; as it is right in here—Tycoon chop. The other was branded W. J. G., Oceanic.

The invoice identified by the witness was marked Defendant' Exhibit E, offered in evidence by defendants' solicitor and is hereto attached.

Q. Will you look at that letter, August 31st, which is marked Exhibit R and annexed to the deposition of C. R. Corbin and is marked John S. Gray, notary public. That is your handwriting, is it?

A. Yes, sir.

Q. That is the letter you wrote with reference to the letter of Shuman & Defrees, which precedes it, marked Exhibit P?

A. Yes, sir; this was the day I got home from Boston. I was not at home when Shuman's first letter came; I was in Boston.

Q. To whom were those Tycoon teas sold?

A. There were fifty of them sold to Lamb & Spencer, at Charlotte.

Q. To whom were the balance sold?
A. 25 were sold to Moulton & Stanley.
Q. You voluntarily took those off the customers' hands, didn't you, at the beginning of this suit?
A. Yes, sir.
Q. What original packages of Tycoon teas? How many have you on hand at present?
A. I can tell you by going to the store; I think it is 81.
Q. You computed the amount at the time you made your answer, didn't you, and swore to it?
A. Yes, sir.
Q. The statement in your answer is correct?
A. That is correct as to what I had on hand; yes.
Q. Have you got them yet?
A. Yes, sir; I have never taken those from Moulton and Stanley back; they are there subject to my orders.

Mr. SHUMAN: They are a part of the 81, are they?

A. Yes, sir: they are subject to my order. I have never received a cent of money for them; they are my teas.

Mr. HOSMER:

Q. They are held by them subject to your order?
A. Yes, sir; Lamb & Spencer's I took back and shipped them something in the place of them.
Q. Mr. Hamilton testified at Jackson that you went to Jackson and you bought of him a pound of this Tycoon tea?
A. Yes, sir.
Q. I notice the bill of the complainant in this case charges you with selling a spurious article. Will you state whether you
203 made a test of that tea which you purchased of Hamilton, comparing it with your own?
A. I did, sir.

Objected to as incompetent, immaterial, and improper.

Q. State, if you please, how your Tycoon chop compared with that that you purchased of Hamilton.

Objected to for the same reason.

A. It graded better. My tea will go a grade better than that tea; if it won't, I know nothing about tea. If I can't put six and six or twelve and twelve samples together and pick out my tea, tell it in the bottom of the cups, I can't do anything. The grades are as distinct as that.
Q. There has been an advertisement offered in evidence in the Detroit Commercial. Which one of your firm inserted that advertisement?
A. I did.

The copy of the Detroit Commercial containing the advertisement referred to was offered in evidence of [by] defendants' solicitor, was marked Exhibit F, and is hereto annexed.

Q. Who inserted that advertisement?

A. I did.

Q. I notice on here the statement that you have 400 chests of Tycoon chop; state whether you had ordered at that time 400 chests.

A. No, sir; I had not.

Q. That is an exaggeration of the merchant common to the trade, isn't it?

A. Yes, sir.

Q. All the tea you had or had contracted for was the 100 chests mentioned in your answer?

A. Yes, sir; or ever bought.

Q. I notice that you speak in here—referring to complainants' Exhibit R—" We do not have any desire to have any trouble with Corbin, May & Co., and certainly do not wish to steal any one's trade-mark or imitate labels used by other firms, and we regret that this has occurred, for if it had been known by this firm that it would in any way injure or annoy firms in the same line of business we never should have bought the tea, and in future there will be no complaint from us on that hand," &c. That, as I understand, was written as a matter of courtesy and as a matter of fair dealing?

A. That is it exactly.

Q. But without any concession to use the word as an absolute right?

A. I granted no concession, because I did not think they had any right to use it any more than any one else, but as long as they did have it I certainly should not touch it.

Q. That is to say, you were willing to yield to their wishes in that regard?

A. Yes, sir.

Q. But not to their compulsion?

A. No, sir.

Q. Do you recognize that publication (showing a paper to witness)?

204 A. The Chicago Commercial Bulletin?

Q. Yes, sir.

Q. Yes, sir.

A. Yes, sir; I do.

Q. That is what?

A. It is a paper, a circular for advertising that is gotten up by private parties; the same as any commercial circular that is issued.

The copy of the Bulletin shown to witness and identified by him was then marked Defendants' Exhibit " G," and was offered in evidence by defendants' solicitor and is hereto annexed.

Q. When was your attention called to that advertisement on page 31?

A. Somebody mailed me that.

Q. That is not the one that was mailed, I guess.

A. That is not the one that was mailed, but the same number was mailed to me.

Q. A similar paper was mailed to you?

A. Yes, sir; with the article marked, and I think I gave it to you.

Q. It was in this one I now show you, was it not (showing a paper to witness)?

A. Yes, sir; that, I am pretty sure, was the paper.

Q. Dated Oct. 27th?

A. Yes, sir.

The paper identified by the witness was marked Defendants' Exhibit H, was offered in evidence by defendants' solicitor, and is hereto annexed.

Cross-examination.

Examined by Mr. **Shuman**:

Q. State the date upon which you had your interview with Mr. Ballou and ordered the 100 chests of tea marked "Tycoon."

A. I could not unless you allow me to look at a copy of the contract. I guess you have got it here. I could not give you the date. If you have a copy of the contract I gave you I think it specified the date; otherwise I made no memorandum of it at all. I have a copy of the contract or a duplicate down at the store.

A paper is here handed to the witness.

A. March 3rd.

Q. March 3rd of what year?

A. 1885.

Q. Mr. Ballou did not have any facings containing the word "Tycoon" with him at the time, did he?

A. I cannot say whether he did or not.

Q. He did not exhibit any to you, did he?

A. Not that I remember of. I could not say he did. He might have.

Q. Who suggested the use of the word "Tycoon?"

A. Mr. Ballou certainly did; I didn't. I think it must have been him. I don't know, but I don't think Mr. Spooner did. I think Mr. Ballou was the man. I know it was him because he was calling over different words there; yes, sir; he was the man, I am positive, who suggested that word, come to think of it.

205 Q. Did you ever reply to the letter of the attorneys of the complainants marked "Exhibit T" and dated Sept. 2, 1885?

A. No; I guess I never wrote anything except the letter of August 31st.

Q. The letter of August 31st was the only letter you wrote them?

A. Yes, sir.

Q. You remember this letter, I suppose?

A. I can't say that I do.

Q. Well, read it.

Witness reads the letter.

A. Yes; I remember now; that is all right.

Q. You remember that letter?

A. Yes, sir; I never answered it.

Q. What conversation did you and Hamilton have about the word "Tycoon" when you called to buy the pound of tea?

A. I went in and saw his brand labeled "Tycoon," or his box there labeled Tycoon tea. I said to the young man there, Is this Corbin, May & Co.'s Tycoon tea? He says, Yes. I says, Give me a pound of it. He weighed a pound of it, and Mr. Hamilton was there, and I stepped over to his desk, and I said, How do you do, Mr. Hamilton? He looked up. I said, My name is Gould, of Detroit; don't you recognize me? Yes; he said he did and he was glad to see me. We went on, and I says, Have you got any of those facings of the chests of Corbin & May? He says, Yes. I says, I would like to see them. I have heard that mine is an exact counterpart. I would like to see them, as I have never seen any of them. I would like to see the teas. He took me back and showed them to me, and I laughed and said, My facings are not a particle like those facings; not at all. I says, Have you got an old chest that is empty that you would let me have one of those facings from? I says, I want to see it. I says, I have been accused of copying or imitating, and I want to show I have not done it. He says, I don't know; we will go into the back room and see. We walked back into the storeroom, and he hadn't got any there, and he says, Well, I have not got any empty chests. Well, I says, I don't know. I don't suppose you would like to take off these chests? He said, No; he didn't think he would. I says, It is all right; it don't make any particular difference. I guess I can get one somewhere. That is all the conversation we had at the time—well, yes; he did say something further. He said, I thought you would not take another person's brand and sell it. I said, No; I didn't want anybody's else brand, because I could sell enough teas of my own without taking any special brand belonging to anybody. I said, I don't want anything of the kind, Mr. Hamilton; and that was about the sum and substance of the conversation, as near as I can remember.

Q. How long has McSkimmon worked for you?

A. About eight years.

Q. Where did he travel—in what part of the country?

A. He travelled on the Michigan Central, Grand Rapids & Ind., and the Lake Shore some.

Q. Was he travelling for you in June, July, and August, 1885?

A. Yes.

206 Q. Did you see Mr. McSkimmon when he came into the store after you had purchased these teas?

A. I did not see him when he came into the store after I had purchased the teas—after the teas had come in.

Q. You say you saw him before, do you?

A. Oh, yes; I probably had. Our rule is to have our men come in every two or three weeks; still, at the same time, I don't always see them myself. I might happen*ed* to meet them; I might notice them and I might not. Sometimes they come in, and if they are in a hurry to take the train they will only be there two or three hours.

Q. Do you know where McSkimmon got the facings he had with him?

A. He got them from the house. They were sent ahead to us by mail. We got the facings long before the teas arrived.

Q. Then he went out on the road to sell them?

A. Yes.

Q. Why didn't you answer that letter of Sept. 2nd?

A. I did answer it, and tore the letter up. I answered it in a way that I thought I would not, if this is the letter to which I replied, and I think it is (witness refers to letter); there is a letter previous to this—a very short letter.

Q. A letter of Sept. 1st, isn't it?

A. That is the letter (referring to one of the exhibits); that is all right. I answered that. I never sent it, because before I had sent it I got this, and I sat down and wrote a very short answer to it, and then I tore it up. I got this letter, and then I went up — Mr. Dickinson's; went in and asked Mr. Bulen for one of their cards; he gave it to me, and I went down to the office, and I wrote this answer, enclosing the names of our attorneys in Detroit. Well, that lay on the table, and finally I tore it up. I thought I would not send it; no use in bringing trouble if there was no necessity for it. That was just exactly the answer I gave when I tore it up. I think Mr. Bulen would remember my coming up there and getting the card.

Q. You say your personal knowledge of the use of the word "Tycoon" on teas is confined to the one instance in 1867 and 1868?

A. It is, where I could give anything positively definite.

Q. Do you know anything about what kind of teas are in these two exhibits, A and B?

A. I never saw it.

Q. You don't know whether it is colored or uncolored, do you?

A. I don't know; I have never seen it; I never opened it, and I never tested it. If the court wants to see them they can open it for themselves, I suppose.

Q. What would you say, from your knowledge from the business, would be the effect upon the business of a house in the grocery or tea business of selling an article of merchandise for which it had established a popular reputation in the market of Michigan if another house in the same business should offer for sale an article similar in appearance under the same name?

A. Why, we do it every day in the week, Mr. Shuman, with lots
of goods—thousands of goods; we sell Cormack's oat-meal,
207 Shumaker's oat-meal: we sell Havemeyer's No. 1 syrup—all
under the same brand; we sell them every day in the week;
it is simply competition in trade.

Q. Simply rivalry in business?

A. Simply rivalry in business.

Q. What would — say would be the effect upon Corbin, May and Co.'s business in the sales of Tycoon teas in the markets of Michigan to have this tea sold by retail dealers in competition with it?

A. If they sold a better tea than Corbin, May & Co. did I think it would hurt them. If Corbin, May & Co. sold a better tea I think it would help Corbin & May. I think it goes on the merits of the goods.

Q. Isn't it your opinion as a tradesman that it would have a damaging effect on their business to have a tea similar in appearance sold in the markets of Michigan under the name Tycoon?
A. Not under the name of Tycoon—specially.
Q. Is that your answer, specially?
A. What was the question?
Q. Read the question.

Question read.

A. No, sir; I do not; not if it was just as good as theirs. I don't think it would have any damaging effect. I think it would help them.
Q. Then why did you say in your letter, Exhibit R, "We think that the facings on teas or labels on goods that are used by one firm should be respected by others, whether they are copyrighted or not?
A. As a matter of courtesy I do.
Q. Simply as a matter of courtesy?
A. Yes, sir; and also to benefit the house. I would not want to advertise anybody's else goods if I could help it.

Redirect by Mr. **Hosmer**:

Q. In other words, you are perfectly willing to abandon this matter for the benefit of Corbin, May & Co., but you don't want to be driven to it?
A. I certainly should never have bought any more teas of the house I did. That is sure. I didn't think they had any right to it, as far as the law was concerned. As a matter of courtesy a man might concede and think that [what] he would not concede in law or in right, justice, or equity.

Recross:

Q. Can you name any other house besides your own that has sold an uncolored Japan tea in the principal cities of Michigan or in the West in the last seven years under the name of Tycoon except Corbin, May & Co? 208
A. Well, I don't know that they have. I could not except them at all, for I don't know that they have.
Q. Do you know of any other house that has?
A. No, sir; because I never had it called to my attention.
Q. Do you sell teas in the principal cities and towns of Michigan in your business?
A. Yes, sir; I guess in every one of them.
Q. Large dealers in the State, are you not?
A. Yes, sir.
Q. And in Indiana?
A. No, sir; not in Indiana. We do not really have any trade out of our own State. We have a little trade at Butler, Indiana, but not of any amount whatever; probably would not sell $5,000 a year out of our own State.
Q. Do you get the trade papers in your business?

A. I get the New York Commercial Advertiser and papers of that kind; yes. Is that what you mean—commercial quotations?

Q. Yes; what are known as trade papers.

A. No, sir; I never get any of them.

Q. Never get the Detroit Commercial?

A. Oh, yes; I take that.

Q. How many traveling men have you in the State of Michigan and have you had for the last three or four years?

A. Four a year ago—five now.

Q. They travel extensively over the State, don't they?

A. Travel all over it; yes.

Q. Do you know what the meaning of the word "chop" is?

A. Well, it is a crop— the season's crop.

Q. It is a commercial name?

A. Yes, sir; used indiscriminately it is a commercial term.

Q. If a man sold goods under the trade-mark XXXX or XXX or any other particular word or name in the market what would be the effect, in your opinion, upon his business to have another concern sell the same kind of goods or similar goods under the same trade-mark?

A. Using his name and all—say, for instance, McLaughlin's XXXX coffee branded in that way?

Q. Just the word XXXX. Suppose McLaughlin & Co. used the word and W. J. Gould had the same quality and put XXXX upon it and put it in the market, what effect do you think that would have upon McLaughlin's business?

A. That would be a matter of opinion.

Q. Do you think it would be a benefit?

A. If I sold as good goods I don't think it would hurt them.

Q. Do you recognize the fact that there is such a thing as unfair rivalry?

A. Yes, sir.

Q. What is it?

A. Trying to injure another man's trade by selling a lower class of goods at lower prices under the same brand and palming them off for the same goods. That is unfair rivalry.

209 Redirect:

Q. That is a copy of the letter, is it not, that was transmitted to C. P. Lowe & Co. (showing a paper to witness)?

A. Yes, sir; it is a copy of the contract as signed and transmitted to them. I have got the original.

Mr. **Shuman**: It was made for your attorneys?

A. No; for Mr. Spooner.

Q. Who is he?

A. He is a broker here in town, and was present at the negotiation; it was given to him so that he could copy it.

Counsel for complainants waives the production of the original contract and allows the witness to testify from the copy, which is marked "Defendants' Exhibit J," and is hereto annexed.

WITNESS: The object of writing this out was so if any more orders were given he could copy this, as they have to have credits, and so on; it was a guide to him.

Mr. HOSMER:

Q. How are teas sold here with reference to brands in the State of Michigan? Are they sold with reference to the brand or with reference to the sample and quality of the tea?

A. Upon the sample and quality of the tea.

Q. Did you ever know of any tea sold in Michigan by the brand?

A. No, sir; I never sold a tea in my life by the brand.

Q. What is the custom of customers—to ask for a brand or for a general style of tea?

A. They look at the tea and the style of the tea; if he is a good buyer he will look at the tea and draw the tea.

Q. That is true of the retail customer, is it?

A. Yes, sir; even in the small towns of the State I have had men grade tea closer than a professional tea man could. I am speaking of them.

Q. If they want a Young Hyson tea they ask for it, don't they, and not for anything packed under a particular name?

A. Yes, sir; they would ask for Young Hyson, Oolong, basket-fired, &c.

Recross:

Q. You say you compared the Tycoon tea which you purchased from Mr. Hamilton with the Tycoon tea which you had on hand. Did you find them both to be uncolored teas?

A. Well, they are not similar in appearance; they are what we — or what is designated as pan-fired; they are all pan-fired teas, but what is more commonly known among the retail trade as sun-dried. There is a distinct difference, though, between his tea and mine—quite distinct—because mine is a darker leaf; in fact, they will vary. There is a different firing, and that is what makes the variation in the color. For instance, Frazier's fired will be very much darker than Smith — Baker's, and Mourlyean & Co.'s will be lighter than either of them—that is, the tea will be lighter.

Q. Yours is an uncolored tea, isn't it?

A. Mine is an uncolored tea; yes, sir.

210 Q. And, seen in the chest, it is similar in appearance to that of Corbin, May & Co.'s?

A. Yes, sir; or any other tea fired under that process.

Q. Do you know how Corbin, May & Co.'s tea is fired?

A. Well, yes; a pan-fired tea.

Q. How do you know it is a pan-fired tea?

A. I know it from the general designation of the term.

Q. What is meant by pan-fired?

A. It is taken by that process and put into a pan without any coloring matter, and is dried on the fire in that way to give it a peculiar flavor; they give it a peculiar firing or curing of the tea. Some will take the same tea and make it a heavier draw by a slight varying of the fire—make it a little more what we call "toasty" by giving it a little more firing.

Q. Did you ever hear the term "basket firing?"

A. Yes, sir.

Q. Do you know what that is?

A. That is a very dark tea, very much darker than these, without a particle of coloring matter at all. Now, when you come down to it, all these pan-fired teas, there is very little stuff thrown in.

Q. In pan-firing?

A. Yes, sir. In Corbin, May & Co.'s and everybody's else.

Q. You don't know whether Corbin, May & Co.'s teas are pan-fired?

A. They call them sun-dried. Some call them sun-dried and some pan-fired.

Q. Do you know what representations they have made with regard to the firing—whether it is pan-fired or-basket fired?

A. I don't. I don't — whether they made any, but they didn't claim it to be basket-fired. Of course, they would not do that, because it would be entirely out of question, because basket-fired tea is so dissimilar. They couldn't sell them in this State now as basket-fired, because there is not much demand for those basket-fired teas. A basket-fired tea is sensitive to dampness in the cellar of the retail store, and that is the reason why they are not more used. They are a very popular tea when first used, but after they stand in the retailer's store a week or two open they get flat and stale; there is not enough coloring matter, and are not fired enough to hold their flavor.

Q. Do you know whether you gave McSkimmon any instructions with regard to the sales?

A. I didn't; I didn't see Mac at all.

Q. He got his instructions from some other member of the firm?

A. He came in and got the samples. I was away with Mrs. Gould the most of July and all of August. I came back on the 31st of August and left on the 10th.

211 Redirect:

Q. It is stated in the affidavit of Allen Raymond that on or about the 1st of August he was shown the label by McSkimmon. It was about that time, was it not, that Moulton & Stanley, and Lamb & Spencer were sold teas, was it not?

A. It was probably about that time; I couldn't say for certain about that; probably he sold it on that very trip; it must have been, because he was around once in thirty days; it must have been about that time.

212 Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

It is hereby stipulated by the parties to the above-entitled cause, by their respective solicitors, that an abstract of all testimony taken, to be agreed upon by counsel, together with the pleadings in the case, shall be printed by counsel, each side paying one-half thereof in the first instance, and that at the conclusion of the case the same may be taxed as a disbursement by the prevailing party.

PERCY L. SHUMAN,
Solicitor for Compl'ts.
GEORGE S. HOSMER,
Solicitor for Def'ts.

213 UNITED STATES OF AMERICA, *Eastern District of Mich.*, *ss.*:

I hereby certify that the foregoing depositions of Charles M. Garrison, William C. House, and Walter J. Gould were taken before me, Herschel Whitaker, U. S. commissioner, at the office of the clerk of the circuit court of the United States for the eastern district of Michigan, Detroit, Michigan, on the 27th day of February, 1886, in pursuance of a stipulation found upon the first page of the foregoing depositions; that said depositions were taken by me stenographiically, and were afterwards reduced to writing at my dictation; that said depositions were taken at the request of the defendants, to be used upon the trial and argument of the cause now pending in the circuit court of the United States for the eastern district of Michigan, in equity, between Calvin R. Corbin *et al.*, complainants, and Walter J. Gould *et al.*, defendants; that I duly administered the oaths to said witnesses before the commencement of their testimony; that the signatures of the witnesses was [were] stipulated to be waived, as appears by the stipulation above referred to; that I am not connected by blood or marriage with any of the parties, or interested directly or indirectly in the matter in controversy.

[SEAL.] HERSCHEL WHITAKER,
U. S. Commissioner, Eastern Dist. of Mich.

214 Ex. C.

215 DEF'TS' EXHIBIT D.

All bills not remitted for promptly when due are subject to draft.
All claims to be made within three days after receipt of goods.
No exchange or expressage allowed.
Interest at rate of one per cent. per month will be charged on all bills not paid at maturity.
Book —.
Page —.

San Francisco, *Oct.* 29, 1885.

H. Levi & Co., importers & wholesale grocers, proprietors Equity Baking Powder.

Mr. Geo. H. Bellow bo't of H. Levi & Co., importers & wholesale grocers, 117 & 119 Market street.

New York office, 160 Water St.

Pay no money to agents or salesmen unless they have special instructions to collect.

Terms, —.

N. B.—We do not insure delivery or safe carriage of goods.

We ship and take receipts "in good order," and they are at your risk after such receipt is signed by the transportation company.

1 box Tycoon Japan tea, 5, 35	1 75

Paid.

H. LEVI & CO.
J. L.

216 **Def'ts' Exhibit E.**

Charles P. Low & Co., Japan.

Invoice of 350 chests tea, 23 chests dust.

Shipped per ship Harmonia & R. R. to Detroit by order and for account and risk of Messrs. W. J. Gould & Co.

								Codeword.	
W. J. G. & Co.	No.	1.	30 ch.	P. F. tea,	ea. 75 lbs.,	2,250 lbs.,	19.285 pds.,	@ 33.50..	646 05
"		2.	30 "	do.	ea. 75 "	2,250 "	19.285 "	@ 30.50..	588 19
"		3.	30 "	do.	ea. 75 "	2,250 "	19.40 "	@ 28.50..	552 90
"		4–7.	100 "	do.	ea. 70 "	7,000 "	61.765 "	@ 22 —..	1,358 83
"		8–9.	60 "	do.	ea. 70 "	4,200 "	37.95 "	@ 19.50..	740 02
Tycoon chop.		1.	25 "	S. D.	ea. 75 "	1,875 "	16.545 "	@ 28.50..	471 53
"		2.	25 "	do.	ea. 75 "	1,875 "	16.545 "	@ 23 —..	380 54
"		3–4.	50 "	do.	ea. 70 "	3,500 "	31.25 "	@ 21 —..	656 25
"		10.	16 "	tea dust,	ea. 85 lbs.,	1,360 lbs.			
"		5.	7 "	do.	ea. 80 "	560 "			
			373 pkgs.						$5,394 31

Charges:

Firing, packing, & boxes, 222,025 pds., @ 4	888 10	
Packing charges on dust, @ 60c.	13 80	
Marking, matting, & rattans	93 25	
Fire insurance, 1/4 %	15 98	
Storage & shipping	37 30	
Export duty—tea, 212.70; dust, 3.60	216 30	
Interest on cash advances	26 97	
Consular certificate	3 00	
Postage, petties, freight on must. teas, &c.	7 50	
Marine insurance, 7,800, @ 1½-10 %	105 30	
Inspecting commission, 1½ %	68 02	
Buying & drawing commission, 2½ %	170 05	
Bill brokerage, 1/8 %	8 80	
		1,654 37
		$7,048 68

At exchange 3 | 7, 1 | 16, £1,26 41 46.
E. & O. E.
Yokohama, June 23, 1885.

C. P. LOW & CO.

Freight, 32,319 lbs., @ ¾, $565.58.
Marine insurance covered in Union Ins. Society of Canton.
Accepted d'ft for 6,323.63.

217 **DEFENDANTS' EXHIBIT F.**

The Detroit Commercial,

The representative trade journal of Michigan.

Vol. II, No. 101. Detroit, Mich., August 8, 1885. One dollar a year; single copies, 5 cents.

W. J. Gould & Co.

Pan-fired.		Sun-dried.
573 chests, per Harmonia.		400 chests, Tycoon chop, per Harmonia.
250 chests, per Oceanic.	Cut of W. J. Gould & Co.'s store.	125 chests, per Oceanic.
533 chests, per Glenaron.		175 chests, per Glenaron.

New Japan teas, our own importation, by rail; also by Suez canal. Send for samples and prices before buying 61 & 63 Jefferson Ave., Detroit.

218 *The Chicago Commercial Bulletin.*

Vol. 16. Chicago, October 27, 1885. No. 402.

DEF'TS' EXHIBIT H.

The Chicago Commercial Bulletin, page 31.

Corbin, May & Co.'s specialties and market comments.

Injunction granted for the Tycoon tea and against a dishonest tea labeled "The Tycoon chop."

It is no new thing for men who lack the elements of character to build up a reputation of their own for excellence in any article in their line of trade to try to seize and appropriate that of others. The Detroit firm noted in the injunction below, we are sorry to say, appear to be men of that sort. Their salesmen were going up and down the State of Michigan exhibiting their "Tycoon chop" chest facing, claiming that they were "Going to run the Tycoon chop this year;" that they "had just as much right to it as C., M. & Co.," etc. It seems that Chief Justice Waite thinks differently.

That the Tycoon tea of C., M. & Co. attracts the attention of the infringing element is good evidence that tea-drinkers and retail dealers have discovered some merit in the tea.

The document:

219 *Injunction.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

The President of the United States of America to Walter J. Gould, Edward Telfer, David D. Cady, and Louis F. Thompson, copartners as W. J. Gould & Company, and to your counselors, attorneys, solicitors, trustees, agents, and servants and each and every of them, Greeting:

Whereas it has been represented to us in the circuit court of the United States for the eastern district of Michigan, in equity, on the part of Calvin R. Corbin and Horatio N. May, copartners as Corbin, May & Company, plaintiffs, that they have lately exhibited their bill of complaint against you, the said W. J. Gould & Company, defendants, to be relieved touching the matters therein complained of, in which bill it is stated, among other things, that you are combining and confederating with others to injure the said plaintiff- touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience: We therefore, in consideration thereof and of the particular matters in the said bill set forth, do strictly command you, the said W. J. Gould & Company, and the persons before mentioned and each and every of you, under the penalty of ten thousand dollars, to be levied of your lands, goods, and chattels, to our use, that you do absolutely desist and refrain from further use or imitation of a certain trade-mark word "Tycoon" or any reproduction or colorable imitation thereof upon packages, cases, coverings, facings, or labels of tea until the further order of this court.

[SEAL.] Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth.

WALTER S. HARSHA, *Clerk.*

(Here follows photo-lithograph marked p. 220.)

221 EXHIBIT J.

MARCH 3RD, 1885.

Messrs. C. P. Low & Co., Yokohama, Japan.

GENT'N: We herewith authorize you to purchase for our account three hundred and fifty (350) hf. c. tea, and ship by steamer to San Francisco and rail to Detroit, Mich., under letter of credit to be furnished to Daniel Meyer, Esq., of San Francisco, acceptance for value to be given to Daniel Meyer upon presentation of the original invoice and bill of lading, said acceptance to be due six (6) months after the arrival of the tea in San Francisco, and payable at the First National Bank, Detroit, with New York exchange, the pound sterling to be computed at five (5) dollars; said purchase to consist of thirty hf. c. (30) pan-fired Japan tea, the best value obtainable, to cost not to exceed 36 cents per pound landed in Detroit; small, well-made leaf, the color same as sample No. 1, light liquor, and as full, rich, and staying qualities as are consistent with light liquor. We lay decided stress upon cup qualities; the label to be similar to Messrs. Forbes Brothers & Co., Oceanic No. 40. In place of new season's choice substitute May pickings in upper corner. Omit the word uncolored; to be numbered 1 Oceanic upon the fan, and our firm-name as importers, Detroit, Mich., prominently displayed, and the net weight upon the label.

Thirty hf. c. (30) pan-fired Japan tea, same color and characteristics, consistent with grade, as previous grade; the best value obtainable, to cost not to exceed 34 cents per pound *and* in Detroit; same label as No. 1, but to be numbered 2.

Thirty hf. c. (30) pan-fired Japan tea, same color and characteristics, consistent with grade, as No. 1; the best value obtainable, to cost not to exceed 32 cents per pound landed in Detroit; same label as No. 1, but to be numbered 3.

One hundred hf. c. (100) pan-fired Japan tea, same color and characteristics, consistent with grade, as No. 1; best value obtainable, to cost not to exceed 27 cents per pound landed in Detroit; same label as No. 1, but to be numbered 4, 5, 6, and 7, twenty-five of each number.

Sixty hf. c. (60) pan-fired Japan tea, same color and characteristics, consistent with grade, as No. 1; the best value obtainable, to cost not to exceed 25 cents per pound landed in Detroit; same label as No. 1, but to be numbered 8 and 9, thirty of each number. We desire the packages uniform in size, upon the basis of 70 pounds net for the cheapest—25-cent grade—which will give us what we wish, a heavy weight for the better grades, and we wish the net weights of the different grades to appear upon the labels.

Twenty-five hf. c. (25) sun-dried Japan tea; the best value obtainable, to cost not to exceed 32 cents per pound landed in Detroit; well-made leaf, the color same as sample No. 2, light liquor and cup quality consistent therewith—*i. e.*, full and rich; the label to be similar to Jas. H. Forbes, Esq., of St. Louis, "Favorite," substituting Tycoon chop for Favorite; the balance, extra choice Japan tea, sun-dried, garden-picked, same as Forbes label, imported by W. J. Gould & Co., Detroit, Mich., and the net weight to appear upon the same; to be numbered 1.

221½ Twenty-five hf. c. (25) sun-dried Japan tea, same color and characteristics, consistent with grade, as No. 1 Tycoon chop, but to be numbered 2; the best value obtainable, to cost not to exceed 28 cents per pound landed in Detroit, net weight to appear upon label.

Fifty hf. c. (50) sun-dried Japan tea, same color and characteristics, consistent with grade, as No. 1 Tycoon chop, but to be numbered 3 and 4; twenty-five (25) of each number; the best value obtainable, to cost 26 cents per pound landed in Detroit; the packages to be made upon the same basis as those for the pan-fired—*i. e.*, the cheaper or 26-cent grade—to contain 70 pounds net, and the other two grades as heavy as may be, and the net weights to appear upon the labels. While late June shipment is desirable, if, in your judgment, better values will be obtainable in July you will please defer purchase and ship by July steamer.

Commending this order to your best care and judgment, we remain,

Yours very truly, W. J. GOULD & CO.

222 The following copies of certified invoices are offered in evidence by the solicitors for defendants, subject to the objection of complainants' solicitor, such objection to be argued before the court.

Invoice of five packages tea shipped by Smith, Baker & Co. on board the P. M. S. S. Japan, bound to San Francisco, and consigned to Messrs. Phillips, Taber & Co., for account and risk of the concerned:

Marks & numbers.	Pkges.	Description.	Pounds.	Amount.
[IXL] 29	5	Cases, each containing one lacquered chest Tycoon tea----------	325	$150 37
		Charges--------------	---------	10 84
				$161 21
		Com., 2½ %------------	---------	4 02
				$165 23

E. & O. E.
Yokohama, 22nd April, 1873.
(Signed) SMITH, BAKER & CO.

223 CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *May* 17, 1873.

I certify this to be the original invoice presented to me on entry of the merchandise therein named.

(Signed) E. BURKE,
Dp. Collector.

Stm. Japan, Phillips, Taber & Co., May 16, 1873.

Declaration as to Invoice.

I, P. A. Ramée, of the firm of Smith, Baker & Co., of Yokohama, Japan, do solemnly and truly declare that I am the purchaser of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned and which are subject to any ad valorem rate of duty, or to any duty regulated or directed by law to be estimated, or based upon the value of the square yard, or of any other specified quantity or parcel, were purchased, and the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have actually been allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of San Francisco, in the United States of America. Dated at Yokohama, Japan, this 22d day of April, 1873.

(Signed) P. A. RAMEE.

224 *Consular Certificate.*

I, C. O. Shepard, consul of the United States at Kanagawa, do truly certify that at Kanagawa, on this 22d day of April, anno Domini 1873, the within invoice, numbered (6038), in which are mentioned and described certain 5 pkgs. tea, amounting, with the charges thereon, — the gross sum of $161.21, Mexican dollars, were produced to me by P. A. Ramée in person, the purchaser of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of San Francisco, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, at Kanagawa, the day and year aforesaid.

(Signed) C. O. SHEPARD,
[SEAL.] *Consul of the United States of America.*

DISTRICT AND PORT OF SAN FRANCISCO,
COLLECTOR'S OFFICE, *Feb.* 15, 1886.

I hereby certify the above to be a true copy of the original on file in this office.

E. B. JEROME,
Deputy Collector.
S. D. D.

Custom-house,
Cashier's office,
S. F.
Fees paid.
15 Feb., '85.
R. P., M. P.

225 *Consular Invoice.*

Invoice of 100 packages tea shipped by Smith, Baker & Co. on board the S. S. "Colorado," bound to San Francisco, and consigned to order, for account and risk of the concerned.

Marks and numbers.	Packages.	Description.	Pounds.	Amount.
[I X L] 56 | 58	100 Including 50 pkgs. lacq'd boxes.	Japan tea---	2,100	$865 45
Charges & commissions ------	----------	------------	--------	71 64
				$937 09

E. & O. E.
Yokohama, 18th July, 1874.
(Signed) SMITH, BAKER & CO.

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *Aug.* 12, 1874.

I certify this to be the original invoice presented to me on entry of the merchandise therein named.

(Signed) L. M. KELLOGG,
[L. S.] *Deputy Collector.*

Steamer Colorado, Aug. 11, 1874.
PHILLIPS, TABER & CO.

Declaration as to Invoice.

I, Charles Drake, of Smith, Baker & Co., of Yokohama, Japan, do solemnly and truly declare that I am the purchaser of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by the law to be estimated or based upon the value of the square yard or of any other specified quantity or par- 226 cel, were purchased, and the actual cost and quantity thereof, and of all the charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of San Francisco, in the United States of America.

Dated at Yokohama, Japan, this 18th day of July, 1874.

(Signed) CHARLES DRAKE.

Consular Certificate.

I, Geo. N. Mitchell, vice-consul of the United States at Kanagawa, do hereby certify that at Kanagawa, on this 18th day of July, anno Domini 1874, the within invoice, numbered 7469, in which are mentioned and described certain 100 pkgs. tea, amounting, with the charges thereon, — the gross sum of $937.09, Mexican dollars, were produced to me by Chas. Drake in person, the purchaser of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of San Francisco, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, at Kanagawa, the day and year aforesaid.

(Signed) GEO. N. MITCHELL,

[SEAL.] *Vice-Consul of the United States of America.*

227 *Specification of Invoice of* 100 *Packages Tea Shipped by Smith, Baker & Co. on Board the P. M. S. S. "Colorado," Bound to San Francisco, and Consigned to Order, for Account and Risk of the Concerned.*

Marks & numbers.	Pkgs.	Style of packages.	Description.	Pounds.		Prime cost per picul.	Cost p. lb. refired and packed.	Amount.
				Each.	Total.			
[I X L] 56	50	Mats, 100-10 lb. F. P. boxes leaded.	Tycoon tea...	20	1,000	$35 50	$.35^{10}$	$351 05
57	25	Cases, 200-3 lb. lqd. boxes leaded.	" "	24	600	"	$.51^{20}$	307 17
58	35	Cases, 50-10 lb. lqd. boxes leaded.	" "	20	500	"	$.41^{45}$	207 23
					2,100			$865 45
		Charges......	......	......	......	......	......	48 78
								$914 23
		Commission, 2½ %......	......	......	......	......	......	22 86
								$937 09

E. & O. E.

Yokohama, 18th July, 1874.

228 *Consular Invoice.*

Invoice of 110 packages tea shipped per S. S. "Colorado" to San Francisco and consigned to order or Phillips, Taber & Co., for account and risk of the concerned.

[I X L]		
74	110 packages tea, 5,150 (74 lbs. cont'g 10	
No.—110	lacq'd chests), costing	$1,791 93
76	Charges and commissions	147 46
		$1,939 39

Str. Colorado.
Jan. 22, 1875.

PHILLIPS, TABER & CO.

E. & O. E.
Yokohama, Dec. 21st, 1874.
(Signed) SMITH, BAKER & CO.

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *Jan.* 23, 1875.

I certify this to be the original invoice presented to me on entry of the merchandise therein named.

(Signed) E. BURKE,
[SEAL.] *Dep. Collector.*

We, Smith, Baker & Co., of Yokohama, Japan, do solemnly and truly declare that we are the purchasers of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel, were purchased, and the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice
but such as have been actually allowed thereon; that the
229 currency in which said invoice is made out is the currency
which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

We further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of San Francisco, in the United States of America.

Dated at Yokohama, Japan, this 21st day of Dec., 1874.

(Signed) SMITH, BAKER & CO.

I, Thomas B. Van Buren, consul general of the United States at Kanagawa, Japan, do hereby certify that at Kanagawa, Japan, on this

21st day of December, anno Domini 1874, the written [within] invoice, numbered (613), in which are mentioned and described certain 110 packages of tea, amounting, with the charges thereon, — the gross sum of $1,939.39, Mexican dollars, was produced to me by Mess. Smith, Baker & Co. in person, the purchasers of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of San Francisco, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, Kanawaga, the day and year aforesaid.

(Signed) THOS. B. VAN BUREN,
[SEAL.] *Consul General of the United States of America.*

230 *Specification of Invoice of* 110 *Packages Tea Shipped by Smith, Baker & Co. on Board the P. M. S. S. "Colorado," Bound to San Francisco, and Consigned to Order, for Account and Risk of the Concerned.*

Marks and numbers.	Quantity of packages.	Description of packages.	Description.	Net weight.		Prime cost per picul.	Cost per lb. fired and pack'd.	Amount.
				Lbs. each.	Total pounds.			
[I X L] 74	10	Cases ea. cont'g 1 lacq'd chest.	Tycoon tea..	65	650	$35 40	45.58	$296 26
75–76	100	H. c. b. lead	" "	45	4,500	"	33.24	1,495 67
					5,150			$1,791 93
		Charges						100 16
								$1,892 09
		Commission, 2½ %						47 30
								$1,939 39

E. & O. E.
Yokohama, December 21, 1874.

231 *Consular Invoice.*

Invoice of 50 packages tea shipped per S. S. "Oceanic" to San Francisco and consigned to order, for account and risk of the concerned.

[I X L] No. 85.	50 packages tea, 1,500 lbs., costing	$442 73
	Charges and commissions	48 50
		$491 23

E. & O. E.
Yokohama, June 8, 1876.
(Signed) SMITH, BAKER & CO.

Br. str. Oceanic. TABER, HARKER & CO.

June 27, 1876.

Custom-House, San Francisco, Cal.,
Collector's Office, *June* 27, 1876.

I certify this to be the original invoice presented to me on entry of the merchandise therein named.

(Signed) E. BURKE,
[SEAL.] *Deputy Collector.*

We, Smith, Baker & Co., of Yokohama, Japan, do solemnly and truly declare that we are the purchasers of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the places where the goods, wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel, were purchased, and the actual cost and quantity thereof, and of all charges thereon;
232 that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

We further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of San Francisco, in the United States of America.

Dated at Yokohama, Japan, this 8th day of June, 1876.

(Signed) SMITH, BAKER & CO.

I, H. W. Denison, vice-consul general of the United States at Kanagawa, Japan, do hereby certify that at Kanagawa, Japan, on this 8th day of June, anno Domini 1876, the within invoice, numbered 2597, in which are mentioned and described certain fifty packages tea, amounting, with the charges thereon, to the gross sum of $491.23, Mexican dollars, was produced to me by Messrs. Smith, Baker & Co. in person, the purchasers of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of San Francisco, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in said declaration are true.

Witness my hand and seal of office, Kanagawa, the day and year aforesaid.

[SEAL.] (Signed) H. W. DENISON,
V.-Consul General of the United States of America.

233 *Specification of Invoice of Fifty Packages Tea Shipped by Smith, Baker & Co. on Board the O. & O. S. S. "Oceanic," Bound to San Francisco, and Consigned to Order, for Account and Risk of the Concerned.*

Marks and numbers.	Quantity of packages.	Description of packages.	Description.	Net weight.		Prime cost per picul.	Cost per lb. fired & packed.	Amount.
				Lbs. each.	Total pounds.			
[I X L] 85	50	Boxes, 1,500 1-lb. papers leaded.	New crop Tycoon tea.	30	1,500	$29 25	*Cts.* 29.52	$442 73
		Charges....						36 52
								479 25
		Commission, 2½ %						11 98
								$491 23

E. & O. E.
Yokohama, 8th June, 1876.

234 *Consular Invoice.*

Invoice of 308 packages tea shipped per S. S. "Belgic" to San Francisco and consigned to order, for account and risk of the concerned.

[I X L]
308 packages tea, 8,985 lbs., costing ---------------- $2,111 05
115 | 121 300
T., H. & Co. 5 8
308
Charges and commissions ------------------------- 261 95
$2,373 00

E. & O. E.
Yokohama, January 10, 1877.
(Signed) SMITH, BAKER & CO.

Br. stm. Belgic.

TABER, HARKER & CO.

February 1, 1877.

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, 1*st* *Feb.*, 1877.

I certify this to be the original invoice presented to me on entry of the merchandise therein named.

(Signed) J. H. McNABB,
Deputy Collector.

We, Smith, Baker & Co., of Yokohama, Japan, do solemnly and truly declare that we are the purchasers of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the places where the goods,

wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel, were purchased, and
235 the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid, or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

We further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of San Francisco, in the United States of America.

Dated at Yokohama, Japan, this 10th day January, 1877.

(Signed) SMITH, BAKER & CO.

I, Thomas B. Van Buren, consul general of the United States at Kanagawa, Japan, do hereby certify that at Kanagawa, Japan, on this 10th day of January, anno Domini 1877, the within invoice, numbered (4545), in which are mentioned and described certain 308 packages tea, amounting, with the charges thereon, to the gross sum of $2,373, Mexican dollars, was produced to me by Messrs. Smith, Baker & Co. in person, the purchasers of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of San Francisco, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, Kanagawa, the day and year aforesaid.

(Signed) THOS. B. VAN BUREN,
[SEAL.] *Consul General of the United States of America.*

Specification of Invoice of 308 Packages Tea Shipped by Smith, Baker & Co. on Board the Occidental and Oriental S. S. "Belgic," Bound to San Francisco, and Consigned to Order, for Account and Risk of the Concerned.

Marks and numbers.		Quantity of packages.	Description of packages.	Description.	Net weight.		Prime cost per picul.	Cost per lb., fired and packed.	Amount.
					Lbs. each.	Total pounds.			
New crop.									
[I X L] ----------	115	25	Hf. chs., 45 lbs. bulk, leaded---	Choicest Tycoon tea.----	45	1,125	$22 75	$22 77	$256 15
" ----------	116	50	Boxes, 30 lbs., " " ---	" " " ----	30	1,500	"	22 94	344 18
" ----------	117								
	—	100	" 3,000 1-lb. papers, " ---	" " " ----	30	3,000	"	24 45	733 60
" ----------	118								
" ----------	119	50	" 3,000 ½ lb. " " ---	" " " ----	30	1,500	"	25 57	383 55
" ----------	120	50	Mats, 200.5 lb. F. P. B., " ---	" " " ----	20	1,000	"	25 76	257 58
" ----------	121	25	" 50.10 lb. " " ---	" " " ----	20	500	"	24 63	123 16
T. H. & Co.-------	8	8	Boxes, 45 lb. bulk, " ---	" broken leaf----	45	360		03 56	12 83
		3 8				8,985			$2,111 05
			Charges-------------------	-----------------	-----	-----	-----	-----	204 07
									2,315 12
			Commission, 2½ %---------	-----------------	-----	-----	-----	-----	57 88
									$2,373 00

E. & O. E.
Yokohama, 10th January, 1877.

237 *Testimony of George P. Spooner.*

(1.) Reside in Detroit; thirty-seven years of age; am a tea broker. Know W. J. Gould & Co.; remember a purchase of tea made by Walter J. Gould called Tycoon chop. Gould purchased it of C. P. Low & Co., of Japan, through a Mr. Ballou. Purchase was made in Detroit. It was purchased by Mr. Gould personally. I was present at the negotiation between Mr. Gould and Mr. Ballou. (2.) Mr. Ballou had an order for some teas for direct shipment from Japan, and the question arose as to how they should be faced, and various chops were proposed; and Ballou had some photographs with different facings with him which he showed to Mr. Gould, and he had one branded "Favorite" which Ballou said was used somewhere else, and Gould said he did not want to have any body's else face mark; and I don't remember whether I or some one else suggested Tycoon, and Gould said, "O, yes, call it Tycoon," in a kind of an offhand way. No reference was made at that time to the fact that Corbin, May & Co. were using the word "Tycoon." It was not mentioned in that conversation.

Cross-examination:

The conversation was about February or March, 1885. I could tell exactly, because I had a copy of the order, but I gave it to Mr. Gould. Never heard of the word "Tycoon" having been used upon tea up to that time. (3.) I never saw any of Corbin, May & Co.'s tea marked "Tycoon," nor anybody's else. Never saw any here in the city of Detroit. It was Mr. Gould's direction that the word "Tycoon" should be put upon that facing in the——

238 & 239 *Stipulation.*

That the witnesses, William D. Earnley and Young, grocers, at 247 Grand River avenue, Detroit, composing the firm of Earnley & Young, would testify that the witness, William C. House, who testified in this case heretofore, on the part of the defendants herein, was mistaken in his allegation that he had seen the word "Tycoon" on teas here, down town, at Ecarnley & Young's, on Grand River avenue, and that he saw that said teas were handsomely put up and that the word "Tycoon" was upon them, and that both of said witnesses would testify that they never had in their store any teas containing the word "Tycoon" upon the facings, either at the time covered by the testimony of said William C. House, before that time, or since that time, and that said House never saw in their store, as testified by him, any teas which were sold under the name of "Tycoon," or that he saw quite a pile on the counter marked "Tycoon," and that neither of said witnesses, Earnly or Young, ever told said witness House that they had imported any teas, from a Chicago house or otherwise, marked with the word "Tycoon" as a trade-mark or otherwise.

240 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Compl'ts,
vs.
WALTER J. GOULD *et al.*, Def'ts.

It is hereby stipulated by and between the parties to this cause, by their respective solicitors, that the testimony of George H. Ballou, Jacob S. Taber, W. J. Tilley, Thomas B. Coghill, George H. Murdock, Addison Martin, William M. Hand, Morris Newton, Charles T. Bowen, George A. Moore, all of San Francisco, and John Cushing, of Oakland, California, and such other witnesses as may be produced, may be taken in behalf of defendants, before James L. King or other notary public, at the office of Sheldon G. Kellogg, attorney-at-law, Merchants' Exchange building, San Francisco, California, commencing on the 18th day of March, A. D. 1886, at ten o'clock in the forenoon, and continuing from day to day until completed, and that the same may be read in evidence as testimony as if taken before an examiner of said court, and that an order may be entered in said cause extending time for taking proofs until sixty days after taking of said deposition.

P. L. SHUMAN, *Compl'ts' Sol'r.*
DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

Chicago, Feb. 22, 1886.

241 It is now stipulated between Sheldon G. Kellogg, appearing for the solicitors for the defendants, and Mr. P. J. Van Lobensels, acting for the solicitors for the complainants herein, that all testimony taken before the said James L. King, notary public herein, shall be considered as having been taken under objection by the solicitor for the complainants, said objection now being general, but with the same force and effect as if the proper objection had been taken to each and every question asked by the solicitors for the defendants.

Also that all the cross-interrogatories on the part of the complainants shall be considered as having been taken under objection of the solicitors for the defendants, said objection being now general, but with the same force and effect as if the proper objection had been taken to each and every question asked by the solicitors for the defendants on each and every interrogatory asked by the solicitors for the complainants.

It is further stipulated that the signing of the depositions by the witnesses, respectively, shall be waived.

SHELDON G. KELLOGG,
Solicitor, Acting for Defendants.
P. J. VON LOBENSELS,
Solicitor, Acting for Complainants.

San Francisco, Mar. 18, 1886.

242 In the District Court of the United States for the District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

STATE OF CALIFORNIA, } *ss:*
City and County of San Francisco, }

I hereby certify that on the days hereinafter set forth, before me, James L. King, a notary public in and for the city and county of San Francisco, State of California, at the office of Sheldon G. Kellogg, attorney-at-law, Merchants' Exchange building, in the city and county of San Francisco, State of California, commencing on the eighteenth day of March, A. D. 1886, at ten o'clock in the forenoon, personally appeared, pursuant to the annexed stipulation, Jacob S. Taber, Thomas B. Coghill, Bela Wellman, George W. Murdock, Addison Martin, William M. Hand, and George A Moore, witnesses named and referred to in said stipulation; and the said Jacob S. Taber, Thomas B. Coghill, Bela Wellman, George W. Murdock, Addison Martin, William M. Hand, and George A. Moore, being each by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, deposed and said as appears by their respective depositions hereto annexed.

And I further certify that said depositions were then and there reduced to writing—type-writing—by me, and were read over to the said witnesses, respectively, the signing of same by said witnesses being waived by counsel for complainants and defendants, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

And I further certify that the reasons why said depositions were taken was that the said witnesses all reside in the State of California, more than one hundred miles from Detroit, in the State of Michigan, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking said depositions, forty dollars, has been paid to me by the defendants, and the same is just and reasonable. S. C. Kellogg appeared for defendants and P. J. Van Loben Sels appeared for complainants.

In testimony whereof I have hereunto set my hand [SEAL.] and official seal, at the city and county of San Francisco, State of California, this 19th day of March, A. D. 1886.

JAMES L. KING,
Notary Public.

JAMES L. KING,
Notary Public and Commissioner of Deeds,
308 *California St., San Francisco, Cal.*

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243 MARCH 18TH, 1886—10 o'clock a. m.

JACOB S. TABER, a witness called on behalf of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. KELLOGG:

Interrogatory 1. What is your name, age, residence, and occupation?

A. My name is Jacob S. Taber.

Int. 2. State your age, residence, and occupation.

A. What do you want to get at with me. I am not on trial. I am 51 years old.

Int. 3. And your residence.

A. San Francisco.

Int. 4. And your occupation or business.

A. Well, I guess they would call me a merchant.

Int. 5. Will you please state the nature of your business—what kind of business you have been in for the past several years?

A. Well, I have been a wholesale merchant of this city for many years.

Int. 6. Will you give the names of the firms with which you have been connected and the dates?

A. Well, I have been connected with the house of Philips, Taber & Co., commencing in 1869, and from that on the firm changed to Taber, Harker & Co. They commenced in about 1875.

By Mr. VAN LOBEN SELS:

Int. 7. Is that the house of Asa Harker now?

A. There is no such house now.

By Mr. KELLOGG:

Int. 8. And when was the house of Taber, Harker & Co. dissolved?

A. In 1882.

Int. 9. During those years, from 1869 to 1882, have the firm with which you have been connected imported and sold large quantities of tea?

Mr. VAN LOBEN SELS: I do not suppose it is necessary for me to object all the time, but this is especially objectionable, and is irrelevant and immaterial under the answer.

Mr. KELLOGG: Our stipulation covers all that. Last question read.

A. If you will strike out the word "large" I will say quantities of tea.

Mr. VAN LOBEN SELS: No. Let it appear as it is there.

By Mr. KELLOGG:

Int. 10. They imported teas?

A. They imported teas and large quantities, but I do not want to be considered as making an expression for myself as a large importer.

Int. 11. Are you familiar with the word "Tycoon" as applied to tea?

A. I am.

Int. 12. State when you first used the word "Tycoon" as applied to tea.

244 Mr. VAN LOBEN SELS: Is not that leading, Mr. Kellogg? We object to that on the ground that it is leading.

Mr. KELLOGG: I will change that question.

Int. 13. Have you used the word "Tycoon," as applied to tea, in your business?

A. I have.

Int. 14. State at what time you first used the word "Tycoon" in that connection, as applied to tea.

A. Well, according to my best remembrance, about the year 1869.

Int. 15. State whether it had not been used prior to that time, to your knowledge.

A. That I do not know.

Int. 16. Did you continue to use the word "Tycoon," as applied to tea, until you went out of business, in 1882?

A. I did.

Int. 17. Did you import considerable quantities of tea each year from 1869 to 1882 under the name of Tycoon tea?

A. Well, if you will strike out the word "considerable" I will answer it.

Int. 18. Did you import tea?

A. I do not want to be considered as an ambitious merchant, but I know that I imported more tea than anybody else.

Int. 19. Did you import quantities of tea each year from 1869 to 1881 under the name of Tycoon tea?

A. I did; only do not put me in the fulsome business; I am very modest.

Int. 20. Did the word "Tycoon" appear upon the labels, facings, and so forth, of packages in which this tea was sold?

A. Always; it always appeared.

Int. 21. Where were those teas fired and by whom?

A. Well, we imported it from Japan and through Smith, Baker & Co.; what they did I do not know.

Int. 22. Where did you sell this Tycoon tea?

A. All through the State of California, and through Idaho, Montana, and everywhere that San Francisco could reach a market.

Int. 23. Did you have a particular brand of tea which you called Tycoon tea?

A. No, I did not; I had a brand which I called that.

Int. 24. Was there a demand for tea among merchants which was called Tycoon tea?

A. Yes, sir.

Int. 25. In your trade did you have an especial kind of tea known as Tycoon tea?

A. No; now, you ask me the question, I did not; but the word "Tycoon" was used indiscriminately by everybody. Mine was the

I X L tea. Am I under examination now? I am getting very tired of this business. You are antagonizing each other. I used that word "Tycoon" indiscriminately, and everybody had a right to use it. It was a name adopted without any thought of advantage and was considered anybody's mark—Eh?—to which individuals attached their own brands *ad libitum*.

Int. 26. With what firm or house have you been connected since you went out of business, in 1882?

A. H. Levi & Co.

245 Int. 27. Will you state whether H. Levi & Co. now use the name Tycoon as applied to tea?

A. I will.

Int. 28. Have they so used it all the time since you have been with them?

A. They have.

Int. 29. Do they sell Tycoon tea as much now?

A. Under our own name; under our own trade-mark name; but the word "Tycoon" is used by us all the time.

Int. 30. Will you state whether or not the word "Tycoon" has been commonly and continuously used and applied to teas by various other houses in San Francisco besides your own since 1870?

A. I think it has been used by everybody in California.

Int. 31. Is this tea now sold by H. Levi & Co.—this Tycoon tea now sold by H. Levi & Co.—Japan or China tea?

A. That is Japan tea.

Int. 32. Was the Tycoon tea sold by your firm from 1869 to 1882 Japan or China tea?

A. Japan tea.

Cross-examination by Mr. VAN LOBEN SELS:

Cross-interrogatory 1. Mr. Taber, I desire to ask you a few questions in explanation of your testimony. I understood you to say that the word "Tycoon," as applied to tea, had never been applied and never been used by anybody as a special brand to denominate a special brand or kind of tea?

A. Well, I did not say that; I said everybody used it.

Cross-int. 2. But it was not a name of anybody who imported tea to designate an especial brand of tea, was it?

A. Well, the word "Tycoon" was open to everybody; I keep on repeating that; it was no especial house and everybody had a right to use it.

Cross-int. 3. In other words, is not it a fact that, in addition to the word Tycoon, the importers always had a special brand of their own to designate a particular brand of tea?

A. Yes, sir.

Cross-int. 4. For instance, was not the kind of tea you imported called I X L Tycoon tea?

A. Yes, sir.

Cross-int. 5. Was there not another brand—for instance, it might be called a diamond L Tycoon tea?

A. You must not ask me about other brands except my own. For instance, ours was I X L in a block.

Cross-int. 6. What is a block?

A. Give me a pencil and a piece of paper and I will show you; that is it.

The witness marks I X L and encloses it with lines.

Cross-int. 7. Is it a fact, Mr. Tabor, that the word "Tycoon" when first applied——

By Mr. KELLOGG:

Cross-int. 8. One moment. Will you allow me to ask him to explain about the I X L. If it had any connection with the tea, what was that I X L?

246 A. It was our trade-mark for that tea.

By Mr. VAN LOBEN SELS:

Cross-int. 9. Now, then, those teas that you refer to as having been imported in early days as I X L Tycoon tea, were they not all colored Japan teas?

A. They were the ordinary teas known as Japan teas of those days.

Cross-int. 10. But were they not colored teas?

A. I do not know; they were not what we understand now as uncolored teas.

Cross-int. 11. Are you acquainted with the brand of tea, imported by the house of H. Levi & Co. at the present time, called the "Popular Tycoon tea?"

A. Yes, sir; I am.

Cross-int. 12. Do you know when it was at first imported into this market?

A. Yes, sir.

Cross-int. 13. When was that first imported into this market?

A. Within six months.

Cross-int. 14. And is the facing of that marked "Popular Tycoon tea," "packed for H. Levi & Co. by Smith, Baker & Co?"

A. Yes, sir.

Cross-int. 15. And that, you say, was only imported six months ago under that name?

A. I say within six months. I say it was about six months since we got it. We sent to Smith, Baker & Co. to get it about a year ago.

Cross-int. 16. Is it not a fact that the trade on this coast goes very largely by brands?

A. Yes, sir.

Cross-int. 17. And that a great many articles are sold and are known to consumers simply by the brand?

A. Yes, sir.

Cross-int. 18. That is peculiar to this coast?

A. Yes, sir.

Cross-int. 19. And, for instance, an article which may be very well known on this coast under a particular brand, the same identical article may be known under a different brand in the Eastern States?

A. Yes, sir.

Cross-int. 20. And that the word known in connection with the article on this coast may be entirely unknown somewhere else?

A. Yes, sir.

Cross-int. 21. Are you acquainted with a kind of tea which the firm of Smith, Baker & Co. puts up for the firm of Corbin, May and Co., of Chicago?

A. No, sir.

Q. Cross-int. 22. And when you say the word "Tycoon" appeared on the facings of certain teas imported here did that word "Tycoon" have any especial meaning?

A. No, sir.

Cross-int. 23. Was it known to the trade to have any especial meaning or not?

A. Not to my knowledge.

Cross-int. 24. Then, was the only reason that people added it—as a sort of an ornamental superfluity?

247 A. I thought, when I used it, it was a good name to use on tea.

Cross-int. 25. But you never attached any importance to it?

A. Well, you keep crowding me; you won't understand how busy I am. I used it as a popular mark.

The further taking of testimony herein is hereupon adjourned until to-morrow, March 19th, 1886, at 10 o'clock a. m.

JAMES L KING,
Notary Public.

[SEAL.]

248 MARCH 19TH, 1886—10 o'clock a. m.

At same place, met pursuant to adjournment.

THOMAS B. COGHILL, a witness called on behalf of the defendant, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

Direct examination by Mr. KELLOGG:

Interrogatory 1. What is your age and residence?

A. My residence is Oakland at the present time and my age is 50, or will be the next birthday.

Int. 2. What is your occupation?

A. Grocery.

Int. 3. In San Francisco?

A. Yes, sir.

Int 4. How long have you been in that business in San Francisco? What is the name of your house?

A. Coghill & Simon.

Int. 5. How long have you been in the grocery business in San Francisco?

A. Continuously since 1865. Before that I was here and went away.

Int. 6. During these years, from 1865 to the present time, have the houses with which you have been connected imported and sold tea?

A. They have, since 1868 or '9; I am not positive which.

Int. 7. In what quantities—considerable quantities?

A. Yes.

Int. 8. Have you, in your trade, used the word "Tycoon," as applied to teas?

A. Yes, sir.

Int. 9. State how you have used the word.

A. I remember the word on the packages and papers—the outside packages and papers. The firm was then Coghill, Lyons & Co.

Int. 10. At what time?

A. The partnership was formed, I believe, in 1868. I think the tea importations commenced about 1869. That is my best recollection.

Int. 11. How have these houses, during these years, used the word "Tycoon" you say on packages?

A. On packages—yes; on the outer label, and also on the paper packages of pounds and half pounds. It was used more particularly at that time.

Int. 12. What do you mean by the papers?

A. The tea was packed in pounds, half pounds, and third pounds.

By Mr. Van Loben Sels:

Int. 13. It was on the outside cover and on the inner papers also?

A. Yes, sir.

By Mr. Kellogg:

Int. 14. Do you remember when your house first used the word "Tycoon?"

A. I think about the first importations of tea made by the house.

Int. 15. In 1869?

A. Yes, sir.

Int. 16. Do you use the word Tycoon in that connection
249 at the present time?

A. Yes, sir.

Int. 17. Have you continuously used the word "Tycoon" from the first importation in 1869 to the present time?

A. No, sir.

Int. 18. In what times have you used it?

A. I do not remember when it stopped or why. It was left to the discretion of the brokers.

Int. 19. Did you use the word Tycoon, as applied to tea, in 1879?

A. I cannot remember, but I believe not, though. I remember it among our first importations, and parties would order frequently, saying, Send me a package of Young Hyson, Oolong, and Tycoon.

By Mr. **Van Loben Sels**:

Int. 20. And it was all precisely the same tea?

A. It was precisely the same tea. Those names possessed no significance, as far as the tea was concerned.

By Mr. **Kellogg**:

Int. 21. Was the kind of tea called Tycoon tea Japan or China tea?

A. Japan.

Int. 22. State whether or not, of your own knowledge, the word Tycoon has been applied to tea by various other houses in San Francisco besides your own.

A. I believe so.

Q. And has been so continuously used?

A. For several years it was so used.

Int. 24. Did you ever claim any exclusive right to use the word Tycoon?

A. No, sir.

Int. 25. Never made a trade-mark of it, or attempted to?

A. No, sir.

Cross-examination by Mr. **Van Loben Sels**:

Cross-interrogatory 1. Mr. Coghill, do you not consider, from the fact that you do not know when you ceased the use of the word Tycoon as applied to teas and when you again started to use it and you have not used it continuously, that there was no special significance attached to the word Tycoon?

A. There was none that I am aware of. I can tell you when I commenced using the word "Tycoon" again.

By Mr. **Kellogg**:

Int. 2. If you can tell that please do so.

A. It was in March of last year.

By Mr. **Van Loben Sels**:

Cross-int. 3. You re-commenced in March, 1885?

A. Yes, sir; I will tell you why. We purchased the stock of Asa Harker & Co., and in that stock was one of his trade-marks—I X L.

By Mr. **Kellogg**:

Cross-int. 4. In connection with Tycoon?

A. In connection with Tycoon; yes. The whole thing was trade-marked in Sacramento; the label was registered at Sacramento.

By Mr. **Van Loben Sels**:

Cross-int. 5. And you attached so little importance to the use of

that word in connection with tea that it was often left to the
250 discretion of the firers or broker in Japan?

A. That is my recollection; yes, sir. We very seldom get an order for Young Hyson or Oolong Japan teas.

Cross-int. 6. Now, is it not a fact that in addition to that word Tycoon appearing on the facings or labels of teas there was always another distinctive mark or brand attached to it—for instance, "popular" or other marks, and those were the particular marks of the tea?

A. Yes, sir.

Cross-int. 7. And the word Tycoon was never in any way a trade-mark or brand except that it appeared on the facing?

A. In connection with the other; that is all.

Cross-int. 8. And it was looked upon as more of a superfluous embellishment?

A. Yes, sir; it was the same tea exactly.

Cross-int. 9. Was the word Tycoon as applied to tea ever in any sense of the word a trade-mark?

A. No, sir.

Cross-int. 10. Was it ever claimed by anybody that he had the right to use that as a trade-mark?

A. Not to my knowledge.

Cross-int. 11. Was Tycoon tea as such ever known as indicating the especial brand of tea differing as such from any other brand of tea?

A. Not to my knowledge.

Cross-int. 12. Then there was never anything known as Tycoon tea on this coast?

A. Nothing, as far as the word is concerned.

By Mr. KELLOGG:

Cross-int. 13. You say your customers ordered it as such?

A. Yes, sir.

By Mr. VAN LOBEN SELS:

Cross-int. 14. But it never had any special significance and it was the same as Japan tea?

A. Never with me; but these country people would order it so; one would want Young Hyson and another Oolong.

Cross-int. 15. But it was a mere superfluous embellishment?

A. Yes, sir.

Cross-int. 16. And that additional trade-mark that was added to it by the letters I X L, popular, or W. B. L. was the real brand by which it was known among the retailers?

A. Yes, sir.

Cross-int. 17. Now, I desire to ask your opinion as an expert in this case if this coast is not peculiar for the way in which various articles are sold by brands or marks more than any other market.

A. All I know about it is particularly applicable to this market; but I do not know that it is more so than other markets.

Cross-int. 18. But this Pacific coast and markets adjoining it—

markets contributory to the Pacific coast market—think brands which are known particularly to this market are better?

A. I think so; yes, sir.

Cross-int. 19. And that, for instance, the identical article
251 which may be sold in this market and be known under a
very valuable trade-mark—that the identical article may be sold beyond the Rocky Mountains under an entirely different trade-mark?

A. Yes, sir.

Cross-int. 20. For instance, is it not a fact that the word "Black Swan," which is very valuable trade-mark for gin, is entirely unknown on the other side of the Rocky Mountains?

A. That I could not say.

Cross-int. 21. You are not acquainted with the gin trade?

A. No, sir.

Cross-int. 22. But it is quite possible that a trade-mark which is very well known in the Chicago market, which we will call the market of the Western States, and has become very valuable there—that that trade-mark may be entirely unknown on this coast?

A. Very likely so.

Cross-int. 23. That word "Tycoon," that you say was employed by your firm in early days in relation to tea—did not that always relate to colored teas?

A. At that time there was only colored tea, according to my recollection. We did not have at that time, I think, the uncolored teas.

Cross-int. 24. And it was never, to your knowledge, applied to the strictly uncolored, pure, and unadulterated teas?

A. Not the uncolored; no, sir.

By Mr. KELLOGG:

Cross-int. 25. Is there any strictly uncolored tea?

A. I should think so. There claims to be. They put it through a process and call it uncolored, and it may not be so.

By VAN LOBEN SELS:

Cross-int. 26. Are you acquainted with the particular brand imported in the Chicago market by the firm of Corbin, May & Co.?

A. No, sir.

Cross-int. 27. Entirely unacquainted with it?

A. Yes, sir; I never heard of it.

Cross-int. 28. And that tea to which you say the word "Tycoon" was applied—was that sun-dried or pan-dried?

A. It was pan-dried, I think, sir.

Cross-int. 29. Are you sure of that?

A. Yes, sir.

Cross-int. 30. Is it not a fact that the system of pan-drying was introduced since 1879?

A. That I do not know.

Cross int. 31. Then you are not sure of that?

A. I am not sure of that, and I would rather not express an opinion upon that. I have never been there, and I do not know anything really about their process. I know they call some basket-fired and some pan-fired, and the pan-fired is supposed to be colored tea.

Cross-int. 32. But you admit not to be an expert upon that process?

A. Yes, sir.

252 Redirect examination by Mr. KELLOGG:

Interrogatory 1. Where is this tea marked as Tycoon by you fired, and by whom?

A. At Yokohama, by Mourilyan, Hennann & Co.

Int. 2. Where did this tea marked "Tycoon" which you imported from 1868 purport to be from?

A. It was from Yokohama, but I forgot by whom it was prepared.

By Mr. VAN LOBEN SELS:

Int. 3. Is the firm of Asa Harker & Co. in business now?

A. No, sir; we purchased their entire stock.

Int. 4. Please state what the trade-mark is for that kind of tea you speak of as having received.

A. I X L in a block.

Int. 5. Can you state the whole reading of the label of that tea?

A. I cannot from memory.

By Mr. VON LOBEN SELS:

Int. 6. And you say it was only imported for the last six months?

A. No, sir; they had it some time.

Int. 7. Do you know how long they had it?

A. No, sir; but Mr. Taber can tell you all about it if you can get him up here.

253 MARCH 19TH, 1886.

BELA WELLMAN, a witness called on behalf of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. KELLOGG:

Interrogatory 1. Mr. Wellman, what is your age and residence?

A. My residence is over in Fruitvale.

Int. 2. What is your business residence?

A. 126 to 122 Market street.

Int. 3. And your age?

A. 62.

Int. 4. What is your occupation?

A. Merchant; wholesale grocer.

Int. 5. How long have you been a wholesale grocer in San Francisco?

A. Well, since 1849.

Int. 6. Since then and until the present time?

A. Well, of course in '49 we didn't do a very big business, but I have been in the business ever since '49.

Int. 7. What was the name of your house at first?

A. You mean in '49?

Int. 8. Well, you may state that.

A. It has been Wellman, Peck & Co. for the past 20 years—22 or 23 years. In '62 the firm of Wellman, Peck & Co. was organized.

Int. 9. Has that house imported and sold tea?

A. Yes, sir.

Int. 10. In what quantities?

A. Well, in quite large quantities. We have had it packed for us in Japan and China, but mostly in Japan.

Int. 11. Have you in your trade used the word "Tycoon" as applied to teas?

A. Yes, sir.

Int. 12. State how you have used the word "Tycoon" in your trade as applied to teas.

A. Well, we have had teas packed for us in Japan under that head. We started that ourselves some 15 or 20 years ago.

Int. 13. How does it appear—how does the word "Tycoon" appear—on your facings?

A. On the facings outside and on the papers inside. We have had it packed in pound papers, half-pound papers, and have it put on the outside and also on the inside.

Int. 14. You have had it put on the outside and also on the inside?

A. Yes, sir.

Int. 15. When did you first use the word "Tycoon" in connection with tea?

A. I think it is between 15 and 20 years ago; it is over 15 and nearly 20.

Int. 16. Do you use the word "Tycoon" in that connection at present?

A. Yes, sir.

Int. 17. Have you used the word "Tycoon" as applied to teas continuously for fifteen years?

A. Yes, sir.

254 Int. 18. Is this Tycoon tea so marked Japan or China tea?

A. Japan.

Int. 19. Will you state whether or not, of your own knowledge, the word "Tycoon" has been used as applied to teas by various other houses in San Francisco except your own?

A. Yes, sir.

Int. 20. Continuously so used?

A. I think so; yes, sir; as far as my knowledge goes.

Int. 21. Where is this tea marked "Tycoon" fired and by whom?

A. In Japan. It is packed there by Smith, Baker & Co., and was originally packed by Frazer for us, a tea-packer, and Smith; Baker & Co. pack it for us now. There are several different packers there.

Int. 22. Is this tea imported under the name of "Tycoon" tea?

A. Yes, sir; but it has a mark on it besides Tycoon—W., P. & Co. and a cross, and W. P. in a heart.

Int. 23. Is there a demand among customers for Tycoon tea as such under that name?

A. Well, I do not know that there is any particularly; the brand kind of got used and people ordered Tycoon tea.

Int. 24. Have they ordered Tycoon tea during these fifteen years?

A. Yes, sir; but they generally put in—when the order comes to us they order Tycoon tea with our mark on it.

Cross-examination by Mr. Van Loben Sels:

Cross-interrogatory 1. You say in addition to the word "Tycoon" appearing on the facings of those packages you had another mark?

A. We had our own mark.

Cross-int. 2. W. P.?

A. W., P. & Co.

Cross-int. 3. Is it not a fact that W., P. & Co. was your trade-mark?

A. Yes, sir.

Cross-int. 4. And no particular importance was attached to the use of the word "Tycoon" as such?

A. No, sir.

Cross-int. 5. And the "Tycoon" tea was not different from other tea on this coast?

A. No, sir; it was a good brand of tea; that is all.

Cross-int. 6. And Tycoon tea as such was not different from any other tea?

A. No, sir.

Cross-int. 7. And nobody on this coast ever claimed any exclusive right to the use of the word?

A. No, sir; I never heard of it.

Cross-int. 8. Was there ever in your experience any special importance attached among the traders and retailers to the word Tycoon appearing upon the facings?

A. No, sir.

Cross-int. 9. Was it ever in any sense a trade-mark?

A. We never considered it so.

Cross-int. 10. Was it ever, to your knowledge, used for
255 anything beyond a pure embellishment, as a high-sounding
name, without any especial importance being attached to it?

A. Yes, sir.

Cross-int. 11. A mere superfluous name?

A. Yes, sir; and our trade-mark was a particular mark.

Cross-int. 12. And was Tycoon tea ever known to the trade as such on this coast?

A. No, sir; not without other marks on it.

Cross-int. 13. Was it ever different in any essential particular from any other tea?

A. No, sir.

Cross-int. 14. And was not the additional letters I X L or diamond L or W., P. & Co. the real distinguishing mark?

A. Yes, sir.

Cross-int. 15. And by which it was known and sold?

A. Yes, sir; by which it was known and sold.

Cross-int. 16. This market of the Pacific coast and markets west of the Rocky Mountains form an especial market, in which goods are sold under brands and marks that are known only to the traders in this area?

A. Yes, sir.

Cross-int. 17. And is not this market known particularly for the use of trade-marks?

A. Yes, sir.

Cross-int. 18. And may not a particular brand be valuable here that is not known east of the Rocky Mountains?

A. Yes, sir.

Cross-int. 19. And may not a brand that is known east of the Rocky Mountains be unknown here?

A. Yes, sir.

Cross-int. 20. And west of the Rocky Mountains forms an especial market?

A. Yes, sir; and, like yeast powder, people order from brands.

Cross-int. 21. They go by brands more than anything else?

A. Yes, sir.

Cross-int. 22. And may not, for instance, an article that is very well known and sold under a certain brand here—may not the identical article be sold under a different name east of the Rocky Mountains?

A. Yes, sir.

Cross-int. 23. So the Rocky Mountains form a line of demarkation?

A. Yes, sir.

Cross-int. 24. As far as brands are concerned?

A. Yes, sir.

Cross-int. 25. As much so as if they were two different political countries?

A. Yes, sir.

Cross-int. 26. Now, Mr. Wellman, another question: The word "Tycoon," that you say has been employed by you upon teas, was not that always employed upon colored teas?

A. Colored? Well, the teas were colored until—for a great many years, and in fact most of them have now a little coloring.

Cross-int. 27. And, as far as you know, there are on this
256 coast no strictly uncolored teas?

A. No; there has not been for years on this coast any strictly uncolored teas, but lately it is coming that way.

Cross-int. 28. But before 1880 there was no strictly uncolored tea on this coast?

A. No; unless somebody got it for their own use.

Cross-int. 29. Why?

A. Because it would not sell on this coast.

Cross-int. 30. And sun-dried?

A. Yes, sir; or basket-dried.

Cross-int. 31. Are you acquainted with the teas imported by the firm of Corbin, May & Co., of Chicago?

A. No, sir.

Cross-int. 32. You are entirely unfamiliar with them?

A. Yes, sir.

257 MARCH 19TH, 1886.

George J. Murdock, a witness called on behalf of the defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

Direct examination by Mr. Kellogg:

Interrogatory 1. Mr. Murdock, what is your age and residence?

A. 38; Alameda.

Int. 2. What is your occupation?

A. Insurance agent.

Int. 3. What was your occupation from 1871 until 1884?

A. Assistant book-keeper.

Int. 4. For whom?

A. The house of Philips, Taber & Co. and Taber, Harker & Co. and Asa Harker & Co., the one succeeding the other.

Int. 5. Until what time were you with Asa Harker & Co.?

A. Until a year ago March.

Int. 6. A year ago in March?

A. Yes, sir.

Int. 7. What was the nature of their business—the business of the houses?

A. They were wholesale grocers and importers of teas.

Int. 8. In what quantities did they import and sell teas?

A. Large quantities; among the heaviest of the importers.

Int. 9. Do you know of the word "Tycoon" having been used as applied to teas?

A. I do.

Int. 10. In their trade?

A. Yes, sir.

Int. 11. How was the word so used?

Mr. Van Lobe Sels: Now, allow me a moment, Mr. Murdock. You say you were assistant book-keeper?

A. Yes, sir.

Int. 12. And did you have any means of being at all familiar with the way in which the goods in which those firms dealt were regarded by the trade? Were you not altogether confined to the office?

A. No, sir; sometimes I was outside and some portion of the time I was shipping clerk of the store.

Int. 13. As a rule, the book-keeper is more confined to the office?

A. I gave that as my occupation, although really I was not on the books—not on the general books, the ledger, journal, &c.—but I gave that because I kept the books of all importations entirely.

By Mr. Kellogg:

Int. 14. How was the word "Tycoon" used, as applied to teas? How did it appear?

A. It appeared on the labels of the boxes, and, I think, on the packages of the teas—that is, when it comes in pound or half pounds, as they come as in our brand. Our brand was I X L Tycoon tea, imported by Taber, Harker & Co.

Int. 15. When did these houses first use the word Tycoon in connection with teas?

258 A. From the commencement of the importation of that brand—the I X L brand—and I think that was from the commencement of their business; that was their principal brand.

By Mr. VAN L-BEN SELS:

Int. 16. About what time was that?

A. Let me see.

By Mr. KELLOGG:

Int. 17. About when?

A. In the sixties—say '66; that would be safe.

By Mr. VAN LOBEN SELS:

Int. 18. To when?

A. To the date of the going out of business of the house, in 1884.

By Mr. KELLOGG:

Int. 19. That is, the house of Asa Harker & Co.?

A. Yes, sir; that was the last house.

Int. 20. Was the word "Tycoon" applied to teas by them continuously up to 1884?

A. Yes, sir.

Int. 21. Was this tea imported as Tycoon tea during these years under that name?

A. Yes. I was going to say that I am relying on my memory entirely, and I have not refreshed it at all; but I think I am perfectly safe in saying so.

Int. 22. Do you know whether there was a demand among customers for tea marked "Tycoon"—"Tycoon" tea?

A. I do not think that they had—I think not. I think that was merely a secondary consideration. I think the brand I X L was what the tea was known by; not any more than our other brand of A. X. in the block, which was known as Yamasharo.

Int. 23. Was the tea so marked Tycoon tea Japan or China tea?

A. Japan.

Int. 24. Where was the tea imported as Tycoon tea prepared, and by whom?

A. From Yokohama and prepared by—most of the tea by Smith, Barker & Co., and afterwards by some house that I do not remember.

Int. 25. State whether or not, of your own knowledge, the word Tycoon had been used as applied to tea by various other houses in San Francisco other than the one with which you were connected, from 1870 to the present time?

A. I think it has been in very common use by many other houses.

Int. 26. And been continuously used?

A. Yes, sir.

Cross-examination by Mr. VAN LOBEN SELS:

Interrogatory 1. Was there ever, in your experience, any especial importance attached among the traders and retailers on this coast to the use of the word Tycoon appearing on the facing of tea packages? Was it not a fact that the additional trade-mark, the words I X L or W., P. & Co. was the real trade-mark and the brand by which it was familiarly known?

A. Yes, sir; the trade-mark in teas of especial brands of especial houses is the principal thing.

Cross-int. 2. And that "Tycoon tea," as such, was never in any essential different from any other tea; was it different from Young Hyson, say?

A. Well, yes.

259 Cross-int. 3. In what particular?

A. Well, it is intended to give standing to it; it is a part of the name, not the leading part, but the secondary part.

Cross-int. 4. Was it ever anything more than an embellishment?

A. No, sir.

Cross-int. 5. And it was not a distinctive mark of tea?

A. No, sir; it was used by many houses.

Cross-int. 6. It was used by many houses, and therefore never any especial importance was attached to it?

A. No, sir.

Cross-int. 7. Was it ever used or claimed by anybody to be owned by anybody as a distinctive trade-mark?

A. Not that I know of.

Cross-int. 8. Or that he had the exclusive right to use it?

A. I never heard of any controversy on the subject.

Cross-int. 9. Was it known among the merchants here that it was everybody's word?

A. That several of them used it.

Cross-int. 10. Then was it ever in any sense a trade-mark as such? You know the meaning of the word trade-mark, do you not?

A. Yes, sir; but then I was thinking at one time we did establish a trade-mark, but whether that was included or not—it is my opinion—I think it was.

Cross-int. 11. Was not the word I X L your trade-mark, that you claimed the exclusive right to use in connection with tea?

A. Yes, sir.

Cross-int. 12. Was there ever such a thing known as Tycoon tea as distinctive from any other tea?

A. No.

Cross-int. 13. On this coast?

A. I think not.

Cross-int. 14. Was not the additional letters I X L or W. T. C. the distinctive trade-mark?

A. Yes, sir.

Cross-int. 15. And was it not known by such additional trade-mark?

A. Yes, sir.

Cross-int. 16. Is it not a peculiarity of this market that goods sell and are known by brands and trade-marks.

A. Yes, sir.

Cross-int. 17. More so than any other market?

A. Yes, sir; in other markets they sell tea by sample, and here they sell by trade-mark.

Cross-int. 18. And that not only relates to tea, but gin and other articles?

A. Yes, sir.

Cross-int. 19. This market goes a great deal on marks?

A. Yes, sir.

Cross-int. 20. And each house likes to have its own goods known and marked by itself exclusively?

A. I have never been in trade anywhere else, but I understand it is more so here than in other places.

Cross-int. 21. Is it not a fact that an article may be very
260 well known to the trade here under certain brands, and the same article may be sold in the Chicago market under a different brand?

A. I presume so; but it is beyond my knowledge.

Cross-int. 22. And the brand which may be very well known in the Chicago market may be unknown in this market, and the brand that is very well known in this market be unknown there?

A. That is beyond my knowledge.

Cross-int. 23. You do not know?

A. No, sir.

Cross-int. 24. Do you know whether those teas in relation to which the word Tycoon was used were colored or uncolored teas?

A. They were colored.

Cross-int. 25. There are hardly any uncolored teas imported on this coast?

A. At the time of the commencement of this brand it was unknown, but lately uncolored teas are coming into favor.

Cross-int. 26. It is within the past four years, is it not?

A. Yes, sir; within the past four years.

Cross-int. 27. That what you call colored teas are pan-dried?

A. Yes, sir.

Cross-int. 28. And that word Tycoon, as far as it was used, applied to teas, was only applied to colored pan-dried teas?

A. So far as I know; it may have been put on uncolored teas.

Cross-int. 29. Are you acquainted with the particular kind of teas which are offered for sale and sold by the firm of Corbin, May and Co., of Chicago?

A. No, sir.

Redirect examination by Mr. KELLOGG:

Interrogatory 1. Do you know whether Asa Harker & Co. transferred the right to the IXL Tycoon mark or label to any other house upon going out of business, in 1884?

A. I think they did; to Coghill & Simon.

Int. 2. And were Asa Harker & Co. the successors to Taber, Harker & Co.?

A. Yes, sir.

261 MARCH 19TH, 1886.

ADDISON MARTIN, a witness called on behalf of defendants, being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. KELLOGG:

Interrogatory 1. What is your age and residence, Mr. Martin?

A. I do not like to give my age. I am over 21. I am 21 years old.

Int. 2. That is a formal question, Mr. Martin.

A. Yes, sir.

Int. 3. And your residence?

A. San Francisco.

Int. 4. What is your occupation?

A. Oh, I am a salesman in the grocery business.

Int. 5. What was your occupation?

A. I am with Lebenbaum Bros.

Int. 6. How long have you been salesman with Lebenbaum Bros.?

A. They have only been in business six months.

Int. 7. Who were you with before that?

A. C. J. Hawley & Co.

Int. 8. How long were you with them?

A. I was with Hawley 3 years.

Int. 9. What was your occupation prior to that time?

A. I was in business for myself.

Int. 10. How long were you in business for yourself?

A. Since 1849.

Int. 11. What was the nature of your business?

A. In 1868, '69, & '70 I was in the grocery business, carrying on business under the name of the Co-operative Grocery Store. I was the manager and sole director of it. That is the time that you want to bring this thing to, because prior to that or since that I cannot answer.

Int. 12. In those years, from 1868 to 1870, did you import and sell teas?

A. I did not import, but I sold teas that were imported into this market.

Int. 13. Do you know of the word Tycoon as having been used as applied to teas?

A. On various descriptions of packages the word Tycoon was used.

Int. 14. At what time?

A. 1868, '9, & 1870.

Int. 15. Has it been used, to your knowledge, since then?

A. I cannot tell.

Int. 16. At that time was there a demand among customers for tea marked Tycoon?

A. Not particularly.

Int. 17. Do you know whether teas marked Tycoon have been sold commonly in San Francisco?

A. They were at that time.

Int. 18. But since that time you know nothing about it?

262 A. I know nothing about that; no.

Int. 19. Was the tea marked Tycoon Japan or China tea?

A. Japan.

Int. 20. How did the mark Tycoon appear?

A. On the outside of the packages, on the box, and it is my impression that there was several styles of jars marked Tycoon.

Cross-examination by Mr. Van Lobensels:

Cross-interrogatory 1. Mr. Martin, I wish to ask you a few questions in cross-examination. Is it not a fact that, in addition to the word Tycoon, which appeared, as you say, on those packages in those years, there was always another descriptive mark or letters or emblem connected with it which formed the real trade-mark; the word IXL or diamond L, for instance?

A. No; I think not; I think not. I think it was Tycoon Japan tea.

Cross-int. 2. Are you not mistaken about that?

A. Possibly there were some; I presume, according to my recollection, there was probably half a dozen different styles of packages and shipments in that, but diamond L I do not recollect; I do — recollect any diamond L except a very low grade of Japan tea that was imported by Levi. It was his brand on half-pound and 5-pound boxes. My impression is that Macondary imported a tea under that name.

Int. 3. Did not Macondary have his own trade-mark connected with it?

A. He would have his own shipping mark, but it wouldn't be— it might be the same facing that the other was.

Cross-int. 4. For instance, are you acquainted with the Tycoon W. P. C. brand—Wellman, Peck & Co.'s brand?

A. Yes; I think we have had some of that tea in the store within the last three years; I think so; that is my impression.

Cross-int. 5. And you say that the word Tycoon was used by various parties?

A. Yes, sir.

Cross-int. 6. And nobody claimed any exclusive right to use that as a distinctive brand?

A. No; I do not think they ever claimed it as a distinctive brand.

Cross-int. 7. And no particular significance was attached to that word Tycoon as applied to this tea?

A. Let me look at a memorandum; possibly I have something here concerning that. (After examining memorandum.) I thought I had a memorandum of Wellman, Peck's teas, but I have not.

Cross-int. 8. It has been given in evidence as W. P. C. Tycoon tea?

A. I think that Hawley kept their tea. He kept a great many of Wellman, Peck's teas, and I think he had a tea he called Tycoon tea, a better class of Japan tea.

Cross-int. 9. It is some time since you have been particularly intimate with Japan tea on this coast?

A. I have been for the last four years.

Cross-int. 10. But your memory as to what were the various brands in the market is not quite as good as it was when you were 263 connected with it, is it?

A. No; but at that time there was a very few importers to what there are now.

Int. 11. Were not almost all of those teas colored teas?

A. Well, what we call colored then we do not call colored now. The term is used to distinguish what is basket-fired and the other. They were not basket-fired, but the ordinary Japan teas.

Int. 12. And is it not also a fact that there have been hardly any teas except within the last few years which are absolutely uncolored, pure, and unadulterated teas?

A. You go too far.

Cross-int. 12. Isn't it a fact that it is only within the last 3 or 4 years in this market that uncolored teas have been imported?

A. Under that name it is probably about 4 or 5 years that the attention of people has been drawn to it. They have been trying to put it on the market. All this agitation about colored teas has been going on of late, but the difference is very little.

Cross-int. 14. In your opinion?

A. And it is with the people.

Cross-int. 15. Then you also are of the opinion that there was never any especial significance attached to the word Tycoon as connected with these teas—that it was no distinctive brand?

A. I think it was intended to represent that it was better grade—a higher grade of tea. I think that was the understanding of it. It was a better grade of tea than the ordinary Japan tea. I think some of it was very high-priced tea.

Cross-int. 16. But some of it was very poor also, was it not?

A. There were cheap grades that retailed for about fifty cents.

264 MARCH 19TH, 1886.

WILLIAM M. HAND, a witness called on behalf of defendants, being sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. KELLOGG:

Interrogatory 1. What is your age and residence, Mr. Hand?

A. I am 44.

Int. 2. And your residence?

A. In the store.

Int. 3. No, sir.

A. 313 Turk street.
Int. 4. In San Francisco?
A. Yes, sir.
Int. 5. What is your occupation?
A. Salesman.
Int. 6. With Lebenbaum Bros.?
A. Yes, sir.
Int. 7. What business have you been connected with?
A. Groceries altogether.
Int. 8. For how many years last past?
A. Call it 27 or '8—say 27. It is about 30, but I will make sure of it.
Int. 9. During these years have the houses or firms with which you have been connected sold tea?
A. Yes, sir.
Int. 10. In considerable quantities?
A. Considerable.
Int. 11. Do you know of the word Tycoon?
A. I do.
Int. 12. Having been used as applied to tea?
A. Yes, sir.
Int. 13. When, to your knowledge, was the word Tycoon so used first?
A. Well, in the neighborhood of 15 years ago or before. I cannot exactly give you the date and time.
Int. 14. How long did such use continue in your trade?
A. Well, to my certain knowledge, at least 2 years.
Int. 15. Have you known of the word Tycoon as having been used since—as having been applied to tea since——
A. I have not known of the word Tycoon being used, except about that time. It might have been five years, but it was at least two years.

Mr. Van Lobensels: No questions.

265 March 19th, 1886.

George A. Moore, a witness called on behalf of defendants, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Direct examination by Mr. Kellogg:

Interrogatory 1. State your name, age, and residence?
A. My age is 32 and I reside at 614 Sutter street.
Int. 2. In this city?
A. Yes, sir.
Int. 3. What is your occupation?
A. I am a commission merchant and importer of teas and coffee.
Int. 4. With what house are you connected?
A. I am with the firm of E. L. G. Steele & Co.
Int. 5. How long have you been connected with that house?

A. The house has only been in existence since the beginning of 1885.

Int. 6. They are successors of whom?

A. C. Adolph Low & Co.

Int. 7. How long were you with the house of C. A. Low & Co.?

A. For 15 years.

Int. 8. Do you know, during these years, whether C. Adolph Low & Co. imported and sold tea?

A. Yes, sir.

Int. 9. In considerable quantities?

A. Yes, sir.

Int. 10. Do you know of the word Tycoon having been used as applied to tea?

A. Yes, sir.

Int. 11. How was the word used?

A. It was used as a description of tea.

Int. 12. Where did it appear—how did it appear?

A. On the label.

Int. 13. When did you first use the word Tycoon in connection with teas?

A. Well, that I am unable to state.

Int. 14. Was the word in use when you became connected with the house?

A. Yes.

By Mr. Van Lobensels:

Int. 15. What time was that, about?

A. That was in 1870.

By Mr. Kellogg:

Int. 16. Where was this Tycoon tea prepared and by whom?

A. It was prepared in Yokohama by Walsh, Hall & Co.

Int. 17. Was the word Tycoon placed on the facing and labels at your request?

A. That I am unable to state, but I presume it was.

Mr. Van Lobensels: I object to that and move that it be stricken out.

By Mr. Kellogg:

Int. 18. For how long, for how many years, was the word Tycoon used on packages in connection with tea in your trade?

A. Do you mean after I became connected with the house?

Int. 19. After you became connected with the house; from 1870 to what year?

266 A. I referred to the invoice book this morning to refresh my memory and found it was until '75, as far as I could find.

Int. 20. Was the tea so marked Japan or China tea?

A. It was marked either, I think. Are you asking the question, Was it so marked?

Int. 21. No. Was the tea Japan tea?

A. Yes; it was Japan tea.

Int. 22. Did you ever claim a trade-mark in the word Tycoon?

A. No.

Int. 23. Was it used on Japan tea in the same way as Young Hyson and Oolong on Chinese tea?

Mr. Van Lobensels: I object to that as calling for the opinion of the witness.

The Witness: Do I answer that?

(Question read.)

A. Yes; it was a descriptive name given to the tea, the tea that we imported under that name.

Cross-examination by Mr. Van Lobensels:

Cross-interrogatory 1. Mr. Moore, it is a fact that, besides those importations of tea which your house imported, there were also other houses that imported that tea and had the word Tycoon attached to the label or facing?

A. To the best of my memory there were other houses that imported the Tycoon tea.

Cross-int. 2. Was there not another mark in addition to the word Tycoon appearing on the label?

A. Yes, sir.

Cross-int. 3. What was that mark in your case?

A. Diamond X.

Cross-int. 4. Is it not a fact that the Diamond X was the real trade-mark?

A. Yes, sir.

Cross-int. 5. And the word Tycoon, although it appeared also on the label, was used as an embellishment?

A. Yes, sir.

Cross-int. 6. To which particular word, Tycoon, no one claimed a trade-mark?

A. We never did.

Cross-int. 7. And, as far as you know, the only reason that the word was used was it sounded well?

A. As far as I know, I do not know that it was used because it sounded well, but it was used to describe a certain quality of tea.

Cross-int. 8. Isn't it a fact that there was several kinds of tea on this coast, which had that word Tycoon on the label or facing of the box, which were different kinds? For instance, were you acquainted with the kind of tea that was called W., P. C. Tycoon tea?

A. No, sir.

267 Cross-int. 9. Wellman, Peck & Co.'s tea?

A. No, sir.

Cross-int. 10. Or I X L?

A. That I know.

Cross-int. 11. Was not your tea different from that?

A. I never compared them.

Cross-int. 12. Do you mean to say that Tycoon tea as such had any meaning—that it was differently prepared or fired?

A. I do not think it did. I do not think it had any meaning at all.

Cross-int. 13. Then you did not attach any importance to the word Tycoon?

A. Merely as a matter of custom.

Cross-int. 14. And you have already stated that, in your opinion, it was never in any sense a trade-mark, the word Tycoon or the other words?

A. That is my opinion.

By Mr. KELLOGG:

Int. 15. You said it was used to designate a particular quality of tea?

A. With us it was For instance, say we had one invoice on hand and we would write them over to repeat or duplicate the invoice of Tycoon tea. It was merely used to designate a certain quality of tea.

By Mr. VAN LOBEN SELS:

Cross-int. 16. That was merely between your houses in Japan and yourself?

A. Yes, sir.

Cross-int. 17. And when you say that was done to describe it you do not mean to say that Tycoon tea on this coast was known to customers and retailers from any other kind of tea?

A. They might have been educated up to it.

Cross-int. 18. Did not they call it Tycoon diamond X?

A. Sometimes they would call it diamond X and sometimes Tycoon.

Cross-int. 19. Is it not a fact that by reason of others using that word Tycoon no particular importance was attached to it?

A. Yes, sir.

Cross-int. 20. And when you say it was used as a descriptive mark you mean to say that it was a description of the tea imported by C. Adolph Low & Co.?

A. Yes; in our case.

Cross-int. 21. That Tycoon tea was at that time, as far as you know, only applied to colored teas, was it not?

A. Yes.

Cross-int. 22. And it never, to your knowledge, was applied to colored teas?

A. I do not think there was any uncolored teas imported at that time.

Cross-int. 23. Is it not a fact also that on this coast it is only within a very few years that pure uncolored teas or pan-fried [fired] have been imported?

A. Yes, sir; they are popular, but they are not popular with importers, because they do not hold their quality.

Cross-int. 24. And people here have been accustomed to colored teas?

A. Yes, sir.

268 Cross-int. 25. You are well acquainted with the demand and supply of teas on this coast?

A. Yes, sir.

Cross-int. 26. That has been your particular line?

A. Yes, sir.

Cross-int. 27. Are you acquainted with the kind of teas that the house of Corbin, May & Co., of Chicago, import?

A. Not at all.

Cross-int. 28. I desire to ask you a further question, Mr. Moore, as an expert. Is it not a fact that on this coast various articles sell and are known among the trade generally, the importers and retailers, by brands and trade-marks?

A. Yes.

Cross-int. 29. And that that is a peculiarity of this coast more than any other section of the country, as far as you know?

A. As far as I know, but my experience has been entirely on this coast in mercantile matters.

Cross-int. 30. And on this coast that an article that is well known by a trade-mark, and that same article may be sold in Chicago or the East under an entirely different trade-mark?

A. Yes, sir.

Cross-int. 31. And there they may not know the article by the trade-mark it is sold under here, and *vice versa?*

A. Yes, sir.

Cross-int. 32. And that, speaking as a merchant, the Rocky Mountains form a demarcation line between the markets and between the territory of the markets on this side and on the other side, as far as trade-marks and brands are concerned?

A. Not entirely. For instance, in fruit and salmon and in things that are peculiar to the production—are the production of this coast—the trade-mark is known as well in the East as here, because in the East is our market.

Cross-int. 33. They are put up for the Eastern market?

A. Yes, sir.

Cross-int. 34. For instance, articles like gin or teas, the Rocky Mountains form a demarcation line as between the various markets?

A. Well, not so much now as in the former times before the teas and other things which we imported from the East, in addition to China and Japan, were so easily distributed as now. Formerly when our teas were brought here by sail or steamers our market was west of the Rocky Mountains, and of course the distribution to points east of the Rocky Mountains was made from the Eastern market, and consequently the trade became accustomed to seek—the trade east of the Rocky Mountains became accustomed to seek their brands and west of the Rocky Mountains to seek theirs, and consequently the goods which were produced or imported into this market and sold were sold west of the Rocky Mountains and became known west of the Rocky Mountains, and on the east *vice versa.*

Cross-int. 35. For instance, are you at all acquainted with gin and gin trade-marks?

A. Yes; somewhat; A. V. H. &c.

Cross-int. 36. Are you acquainted with the brand of Black Swan gin?

A. Yes; somewhat.

269 Cross-int. 37. Is it not a fact that that gin is hardly known on this coast except under the name of Black Swan and in the East under an entirely different trade-mark?

A. That I do not know.

Cross-int. 38. And other articles, like yeast powder, say?

A. That I do not know, but of gin I can say.

Mr. Kellogg: Of course that does not make it legal.

Mr. Van Loben Sels: That is a question of law.

Cross-int. 39. You say that you stopped the use of the word Tycoon in connection with tea in 1875?

A. About that time; yes, sir.

Cross-int. 40. And since then you have had no more imported?

A. We have not imported teas under that name.

Cross-int. 41. Although you have imported other teas?

A. Yes, sir; we have imported other teas.

Cross-int. 42. And do you not—would you not conclude from that that your use of the word Tycoon was not of any particular value to your teas?

A. No; not that. It was that the trade-mark diamond X became uncalled for, and we have imported the same quality of teas under the mark of diamond L without the word Tycoon. We had established a trade for diamond L tea with certain other words on the label, and we did not consider it of any importance to put the word Tycoon on it.

It is hereby stipulated that the signatures of the respective witnesses are waived.

JAMES L. KING,
Notary Public and Commissioner of Deeds,
308 *California St., San Francisco, Cal.*

Endorsed: 2974. In the circuit court of the United States for eastern district of Michigan. Calvin R. Corbin *vs.* Walter J. Gould. Depositions on behalf of defendants. Rec'd by mail and opened in open court and filed March 29, 1886. Walter S. Harsha, clerk.

270 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

Calvin R. Corbin *et al.*, Complainants,
vs.
Walter J. Gould *et al.*, Defendants.

It is hereby stipulated that the testimony of such witnesses as may be produced before Charles Flowers, a U. S. commissioner, either on the part of complainants or defendants, on April 15th, 1886, may be taken by him, and their depositions so taken may be read upon the hearing of said cause with the same force and effect as though taken upon due notice before an examiner appointed by the court. It is further stipulated that the signatures of the several witnesses of [to] their several depositions shall be waived.

P. L. SHUMAN, *Compl'ts' Solicitor.*
DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

271 The following testimony was taken by me, pursuant to the stipulation hereto attached, on the 15th day of April, 1886—Mr. Shuman appeared on behalf of complainants and Mr. Hosmer on behalf of defendants:

GEORGE P. SPOONER sworn for defendants.

Examined by Mr. HOSMER:

Q. What is your place of residence, age, and business?

A. I reside in Detroit; I am 37 years of age, and am a tea broker.

Q. Do you know the firm of W. J. Gould & Co., defendants in this case?

A. Yes, sir.

Q. Do you remember a certain purchase of tea made by Walter J. Gould called the Tycoon chop?

A. I do.

Q. From whom did Gould purchase that, if you know?

A. He purchased it of C. P. Low & Co., of Japan, through a Mr. Ballou.

Q. At what point—here in Detroit?

A. In Detroit.

Q. Was it purchased by Walter J. Gould personally?

A. Yes, sir.

Q. Were you present at the negotiation between Walter J. Gould and Mr. Ballou, representing C. P. Low & Co.?

A. I was.

Q. State what occurred at that time.

A. Mr. Ballou had an order for some teas for direct shipment from Japan, and the question arose as to how they should be faced, and various chops were proposed, and Ballou had some photographs with different facings with him, which he showed to Mr. Gould, and had one that was branded "Favorite," and Ballou told him that that mark was used somewhere else, and Gould said he did not want to have anybody's else face mark, and I don't remember whether I suggested or some one else suggested Tycoon, and Gould said, "O, yes; call it Tycoon," in a kind of an off-hand way.

Q. Was there any reference made on the part of anybody at that time to the fact that Corbin, May & Co. were using the word "Tycoon?"

A. Not at all.

Q. Was it mentioned in that conversation?

A. No.

Cross-examination by Mr. **Shuman**:

Q. Do you remember the date of that conversation?

A. I do not exactly; it was February or March, 1885. I could tell exactly, because I had a copy of the order, but I gave it to Mr. Gould.

Q. Did you ever hear of the word Tycoon having been used upon tea up to that time that you had that conversation?

272 A. No; I never did.

Q. You never saw any of Corbin, May & Co.'s tea marked Tycoon, nor anybody's else?

A. No, sir.

Q. Never saw any here in the city of Detroit?

A. No.

Q. It was Mr. Gould's direction that the word Tycoon should be put upon that facing in the place of the word Favorite, which was on the sample which was shown to him, was it not?

A. He wanted some word substituted for this word Favorite. For instance, if Mikado or Mandarin or some other word had been suggested I think Gould would have taken that just as readily as any other.

Q. You think he would have taken the word Mikado as quickly as the word Tycoon?

A. I think he would have taken it just as quickly.

Q. Don't you remember that Mr. Gould told Mr. Ballou to face the goods with that name, Tycoon?

A. He told him to have them faced that way; he understood they were coming that way.

Q. Have you any knowledge of the time when the facings were received here after the goods were ordered?

A. No; I don't know about that.

Q. Are you pretty well acquainted with Gould & Co.?

A. Yes, sir; I know them very well.

Q. You do business with them and are familiar with their business house?

A. Yes, sir.

Q. Do you know a man named McScammon, who was one of their salesmen?

A. I know him.

Q. It has been testified in this case that the facings were received long before the tea arrived, and that the facings were given to Mr. McScammon to take with him and from which to sell the teas in the country. I would like to ask you whether you know anything of the custom of selling teas in this market; how they are ordinarily sold.

A. It is possible and very likely that those facings might have arrived here a month previous to the tea, because the shipper in Japan would send along those facings by mail, and the goods coming by freight would take considerable longer.

Q. You sell teas here, do you not?

A. Yes, sir.

Q. You know the custom of the trade with regard to selling teas, whether or not they are sold from a facing or whether they are sold by sample?

A. They are sold by sample. A man does not buy tea on the facing.

Q. That is the universal custom, is it not, to sell the teas by sample?

A. It is the universal custom.

Subscribed and sworn to before me this 15th day of April, 1886.

CHAS. FLOWERS,
United States Commissioner.

273 **Thomas Lowe**, sworn for defendant.

Examined by Mr. **Hosmer**:

Q. What is your business?

A. Wholesale grocer.

Q. Of what firm?

A. Lowe, Brothers & Co.

Q. How long have you been engaged in the grocery business?

A. As clerk and in business for myself altogether 22 years.

Q. With what firm have you been connected?

A. With Wheaton, Leonard & Burr, Burr & Leonard, W. W. Wheaton & Co., and the present firm, Lowe, Brothers & Co.

Q. All in the city of Detroit?

A. Yes, sir.

Q. Have you with you the tea book of the old firm of Wheaton, Leonard & Burr?

A. I have.

Q. Do you remember a use of the word Tycoon by that firm as applied to tea?

A. Yes, sir; we used that; that was a brand of some teas we had when I was with Wheaton, Leonard & Burr.

Q. State the circumstances and the use of the word.

The witness produces a book, and the page to which he refers is marked " Exhibit A, Lowe."

Q. When was this book begun?

A. In 1865.

Q. How long was it continued?

A. It was continued with Wheaton, Leonard & Burr and Burr and Leonard until 1870.

Q. There have been no entries in that book since 1870?

A. No, sir; not that I know of. I see one handwriting on this page that I do not recognize that was done since that time.

Q. When did the firm of Wheaton, Leonard & Burr go out of business?

A. In 1868.

Q. What firm succeeded it?

A. Burr & Leonard.

Q. When did they go out of existence?

A. In 1873. There were changes in that firm. I was not with them during the last years of their business.

Q. When did W. W. Wheaton & Company go out?

A. In 1868.

Q. You have had possession of the books since that?

A. With the exception of one year, I have had possession of their books.

Q. Since what time?

A. During the year 1870 and the spring of 1871 I did not have possession.

Q. It is not possible that any entry could have been made later than 1880?

A. No. Here is an entry of "Tycoon" made by myself previous to 1870, while I was keeping their books.

Page marked "Exhibit A" is offered in evidence.

A. What was the use of the word Tycoon? How was it applied by the firm of Wheaton, Leonard & Burr?

274 A. Tycoon was the name of brand on the face of the tea.

Q. To what kind of tea was it applied?

A. That was young hyson.

Q. The entry of Tycoon on that page to which you refer is in your handwriting?

A. Yes, sir.

Q. Do you remember any other instances of the use of the word Tycoon contemporaneously with that?

A. I do not now recall any definite instance of it, yet in a general way I have an idea that it was used on other teas aside from that line that we bought.

Q. Used by other merchants at that time?

A. Yes, sir.

Q. What was the object of keeping that book?

A. That was to keep a record of the teas purchased, their cost, the tare, and the selling price.

Cross-examination:

Q. There are some other names on that page; that of S. H. Talbot, at the top, in the same column with the word Tycoon; what does that indicate?

A. That was the name or the brand on the face of the tea, of another line of tea.

Q. There is also the name Thetis.

A. That was the name or brand.

Q. The name Thetis occurs four times?

A. There were different numbers, different invoices, different costs.

Q. The word Tycoon appears once?

A. Yes, sir.

Q. The word Tavestock once?

A. Yes, sir.

Q. And the word Tyndale?

A. That was the entry I knew nothing about.

Q. Don't you know those names Talbot, Thetis, Tycoon, and Tavestock are the names of ships in which those teas were imported?

A. No; I am not sure about that, because I find on some facings of some teas the words "May pickings."

Q. We will confine ourselves to these names here.

A. They may be and they may not be. They may have been refaced in New York. In that case they might be a fanciful name.

Q. You don't know anything about it, do you?

A. I don't know where those were faced. I know that those were the brands on the teas.

Q. You don't know whether those were the names of the ships in which the cargoes were imported?

A. I do not.

Q. You say that is young hyson tea. That was China tea, was it not?

A. I suppose so.

275 Q. You have an impression that the word Tycoon has been used upon teas by other parties. Are you able to name any concern that has used the word Tycoon?

A. I cannot recall to mind any particular instance; yet I have an impression that I have seen it on some facings that were shown.

Q. You don't know by whom or where?

A. I cannot recall to mind any particular instance.

Q. Your testimony now is confined, as I understand you, to the period embraced between the years 1875 and 1870?

A. Yes, sir.

Q. You have seen the word Benefactor used upon teas, have you not?

A. Yes, sir.

Q. You know that that was the name of a ship in which Lowe imported his teas first?

A. I believe they did at first, but it was used so long after. I have heard they kept the brand after the ship was sunk.

Q. They adopted that as a trade-mark?

A. I should call it so. I have never noticed particularly whether it was their facing or not.

Q. So far as your actual knowledge is concerned, the names that you have testified to from the exhibit may be the names either of the vessel in which the cargo was imported —?

A. Yes, sir; or the name adopted by some importer.

Q. So far as your knowledge goes, it may be that?

A. Yes, sir.

Q. You have no knowledge of any importer having adopted that name?

A. No, sir.

Redirect examination:

Q. There was nothing on the teas, as you recollect, to show that they came by that vessel, except the single word Tycoon?

A. That is all that I recollect about it or know about it.

Recross-examination:

Q. Have you a distinct recollection of the exact appearance of this facing?

A. No; but I can recall to mind that that was on the chest—whether on a direct line or a quarter circle I have forgotten.

Q. And they were China teas?

A. I believe so; they were marked China hyson.

Redirect examination:

Q. There was nothing on any Benefactor tea to indicate that it came on the vessel, other than the single word Benefactor?

A. Nothing.

Q. Did you ever see a tea on which the facing showed that it came by a particular vessel?

Objected to as immaterial.

276 A. I cannot be certain whether they were imported by any particular vessel or not.

Q. Did you ever see a tea which stated on the facing that fact?

A. The general trade impression has been that it was sometimes brought by the vessel bearing the name that was on the facing of the chest.

Q. There was nothing, except the single word which might be the name of a vessel, which indicated that it came by the vessel?

A. No. I have seen in general terms stated the name of some vessel per Pacific Steamship Co., and sometimes the name of a vessel not mentioned at all.

Subscribed and sworn to before me this 15th day of April, 1886.

CHAS. FLOWERS,
United States Commissioner.

277 EXHIBIT A, LOWE.

APRIL 15, 1885.

$\frac{11}{9}$	Y. H.	S. H. Talbot	95	16	14	$1 15
$\frac{3}{37}$	Y. H.	Thetis	99 | 100	15	14	1 80
$\frac{3}{84}$	Y. H.	Thetis	87 | 88	14	13	1 85
$\frac{3}{410}$	Y. H.	Thetis	73 | 76	16	14	1 60
$\frac{3}{87}$	Y. H.	Thetis	48 | 49	16	14	1 90
$\frac{11}{4}$	Y. H.	Tycoon	45 | 46	16	14	1 25
$\frac{11}{10}$	-------	Travistock	393	16	14	1 20
$\frac{9}{2}$	Y. H.	Tynedale	76 | 8	16	14	1 00

278 HENRY C. LOWE, sworn for defendants.

Examined by Mr. HOSMER:

Q. What is your age, residence, and occupation?

A. Age, 39; residence, Detroit; occupation, wholesale grocer.

Q. How long have you been engaged in the grocery business?

A. 13 years as member of the present firm and two years previous to that with L. J. Staples & Co.

Q. What is the present style of the firm?

A. Lowe Brothers & Co.

Q. What can you say as to the use of the word Tycoon, if anything, as applied to packages or coverings for teas?

A. Years ago it was a name that we used on caddies considerable, as I remember it. We had a number of fancy names. We used Mikado, Tycoon, and several other of the Japanese and Chinese names that were used with the hieroglyphics on the caddies and chests to represent, as near as we could, original packages. I remember it; 15 years ago, when I first went in business, we had those caddies in the store with the word Tycoon on them.

Q. What do you mean by a tea caddy.

A. A small package; four or five different sizes—ten, fifteen, twenty, and twenty-five pounds.

Cross-examination:

Q. Those were boxes into which the tea was dumped from the original packages?

A. Yes, sir.

Q. And those names you put on the caddies that you kept in the store?

A. Had the labels made by engravers and put on the wooden caddies.

Q. And you just dumped in the tea into those caddies?

A. Filled them up as they were ordered.

Q. So that the words that you have stated that you used were mere embellishments on the caddies?

A. They had no particular meaning to them.

Q. Mere embellishment or ornamentation on the caddies?

A. That is what we designate them for, to make them as near like original package as we could.

Q. Into those caddies you put China teas and young hyson or any of those teas?

A. All kinds.

Q. How long ago was it when you ceased to do that?

A. For 10 years we have had very little of the caddy business. Since the price of teas has got so low there is very little of that in the trade.

Redirect examination:

Q. What is the usual method of packing of teas which are imported from China or Japan into this country?

279 A. They are packed in boxes with tinfoil, or rather sheet lead. A package ranges from 60 to 80 pounds. Around the package, in the first place, is a tin preparation of lead, with paper lining also over the lead. The lead is next to the tea. Over the lead is a paper lining, and then a wooden box is put around that, and outside of that is a matting.

Q. There is no distinction in the various brands and samples of teas as to the matting on the outside of the package?

A. No, sir.

Q. The matting of one tea looks like the matting of another tea?

A. As far as the outside of the tea is concerned, you could not tell what was contained in a package.

Subscribed and sworn to before me on this 15th day of April, 1886.

CHAS. FLOWERS,
United States Commissioner.

Defendants rest.

Endorsed: 2974. The circuit court of the United States for the eastern district of Michigan. In equity. Calvin R. Corbin *et al.*, complainants, *vs.* Walter J. Gould *et al.*, defendants. Depositions of Spooner, Lowe, and Lowe for def'ts. Filed May 8, 1886. Walter S. Harsha, clerk.

280 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Compl'ts,
vs.
WALTER J. GOULD *et al.*, Def'ts.

It is hereby stipulated by and between the parties to this cause, by their counsel, that the testimony of such witnesses as may be produced on behalf of complainants may be taken before James Hewitt, Esq., notary public, at the office of P. L. Shuman, Borden block, Chicago, Illinois, on Saturday, April 17, A. D. 1886, or on Monday, April 19, 1886, and that the depositions may be used on the hearing of said cause, subject to any objection for competency, materiality, or relevancy, but not as to the form or manner of taking such depositions.

Chicago, Ap'l 17, 1886.

P. L. SHUMAN, *Compl'ts' Sol'r.*
DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

281 In the United States Circuit Court for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*, Complainants,
vs.
WALTER J. GOULD *et al.*, Defendants.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Be it remembered that on the 17th day of April, A. D. 1886, personally appeared before me, James Hewitt, a notary public in and for the county of Cook and State of Illinois, Henry F. Brown, James R. Carpenter, M. M. Read, Frank E. Fernald, and Calvin R. Corbin to testify on the part of complainants in the above-entitled cause.

And the said HENRY F. BROWN, have [having] been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. SHUMAN:

Q. What is your name?

A. Henry F. Brown.

Q. What is your age, occupation, and residence?

A. 40 years; my occupation is—I have charge of the tea department of W. M. Hoyt & Co.; my residence is Chicago.

Q. How long have you been in the tea business?

A. About 16 years.

Q. During your connection with that business in what part of the country have you done business?

A. I have been in the tea business in Boston, New York, and Chicago. I have sold goods in various places. I have sold goods in Detroit, St. Louis, Milwaukee, and various points east.

Q. You say that has been during the last fifteen or sixteen years?

A. Yes, sir.

Q. During that time have you seen the word "Tycoon" used upon tea facings—upon tea chests?

A. No, sir. I never saw it until I saw it here. That was the first time I saw it—in Ingraham, Corbin & May's store. It was not Ingraham, Corbin & May; it was Corbin, May & Co. when I first saw it.

Q. How long ago did you see it there?

A. I should say it was—I should think it was somewhere about five or six years ago.

Q. Do you know whether that word used by them—or what kind of teas, rather, that word has been applied to by them?

282 A. Well, I suppose it was A, what is called an uncolored or sun-cured tea—a tea that is strictly free from artificial coloring.

Q. From your knowledge of the business please state whether colored teas are not a distinct class of merchandise from uncolored teas.

Objected to as irrelevant, incompetent, and immaterial.

A. Well, I consider colored tea and uncolored teas are just as distinct as you might say spring wheat and winter wheat—just exactly, because they are entirely different in their make-up.

Q. They are so understood in trade and commerce, are they?

A. Yes; I should say they are.

Q. Your firm had different classes of teas, and you have uncolored teas as distinct from colored teas, have you not?

A. Yes, sir; entirely so. We try to describe them as near as we can, and we lay that fact before our trade, that the colored tea is different entirely from the uncolored tea, and that the uncolored tea is entirely different from the colored tea, and *vice versa.*

Q. Do you know what the custom is in regard to selling teas in the markets of the Northwestern States, particularly Michigan and the States surrounding Chicago, in regard to selling them from samples or from the facings?

A. Well, of course, most of the teas or a great portion of them are sold by sample.

Q. Well, isn't that practically a uniform method of selling tea?

A. Yes; it is. It is a very exceptional case, I guess, when it is sold any other way.

Q. Were you ever in business with Winslow Wright?

A. Yes, sir.

Q. In the tea business?

A. Yes, sir.

Q. In Chicago?

A. Yes, sir.

Q. During the time that you and he were in business here in Chicago do you know whether you sold or dealt in teas or sold any teas that were faced with the word "Tycoon?"

A. I don't remember of ever seeing a package.

Q. Well, if you had any packages would you have seen them?

A. I think I should have seen them, because I looked after the street trade or outside business and Mr. Wright attended to the office business.

Q. You say you never did sell any teas to the trade with the word "Tycoon?"

A. No, sir.

Q. And in your experience you never heard of any other teas than those teas that are now sold by Corbin, May & Co., which are called "Tycoon" teas?

A. Yes; that is the first I ever heard of tea that bore that name; that is the first I ever saw that was faced so.

Q. Be kind enough to examine these samples here and allude to them by the exhibit letter. Look at Defendants' Exhibits A and B and state whether or not that tea is colored or uncolored tea.

A. Well, I should say these were colored teas.

Q. Now, look at Complainants' Exhibits A & C and state what they are.

A. I am satisfied they are uncolored.

283 Q. Now look at Complainants' Exhibit C and state whether or not it resembles in its general appearance Complainants' Exhibit A.

A. Well, it resembles it, but this darker one is a higher grade of tea than the other; that is all the difference. This one, it is barely possible, is a——

Q. I speak now as to general resemblance.

A. I say one is a higher grade of tea than the other.

Mr. **Hosmer**: What did you say is barely possible? You did not finish your answer.

A. I say they resemble each other very much, but one is a higher grade than the other.

Mr. **Shuman**: But I speak now of their general appearance.

A. Yes; I think they resemble each other, but one, perhaps, is trifle darker than the other; but it would not indicate that they were different for that reason, because one might receive more firing, and that would change the color. I think I have got a sample in my pocket.

Cross-examination by Mr. **Hosmer**:

Q. Mr. Brown, what were the years in which you were in business with Winslow Wright?

A. 1878 and 1879.

Q. You were not in business with him before that?

A. No, sir.

Q. Or since?

A. No, sir.

Q. Had you known him before that?

A. Yes; I have known Mr. Wright ever since 1872. When he was with Ezra Wheeler & Co. I knew him.

Q. You say you consider the uncolored Japan tea as distinct from colored tea?

A. Yes; as to kinds and in selling them. If we want to buy colored tea or regular Japan tea—we consider that colored tea—we state so; and if we want uncolored tea or sun-dried tea we state so, because one will not take the place of the other with the consumer or retailer. That is the way we look at it.

Q. Well, there is no more distinction than there is between Java coffee and Mocha coffee, is there?

A. Well, I should judge that the leaf may be the same, but the process is different in preparing the tea. I don't consider Java coffee and Mocha coffee the same.

Q. But you don't consider those the same class of merchandise?

A. I consider them coffees, but I don't consider them the same kind.

Q. No more than you consider a colored tea *and* an uncolored tea?

A. Certainly not; exactly so.

Q. And you would not consider that the granulated tobacco and cut tobacco is the same?

A. Well, I could not say; I could not say as to tobacco. I have had no experience in the tobacco trade, but I have had with tea. I consider that the uncolored and colored tea might be compared with spring wheat and winter wheat, I think.

Q. To spring wheat and winter wheat?

A. Yes; that one would not take the place of the other.

284 Q. You have known Mr. Corbin a good while, have you not?

A. Yes; for a number of years. I have sold him a good many goods.

Q. What is your opinion as to Mr. Corbin's being an expert tea man?

A. I have known Mr. Corbin for a great many years, and I have always looked upon him as one of the best tea men in the city of Chicago.

Q. You haven't drawn either of these samples of tea, have you?

A. No, sir.

Q. And if Mr. Corbin said that the Tycoon chop was a partially colored tea would you believe Mr. Corbin, if he had made a careful examination—more than your own casual examination?

A. I would say, sir, if he said it was a partially colored tea I should say he knew about it.

Q. How do you detect coloring matter in tea in the drawing?

A. Well, I can detect it more readily by sight than by drawing.

Q. Of course, nobody can tell by a casual inspection that this is not the natural color of the tea; that these defendants' exhibits have been colored?

A. If the tea was doped to any great extent there will be considerable on top of the water or on top of the tea, and a good deal will adhere to the cup.

Signature of the witness is waived by consent of counsel.

And the said James R. Carpenter, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. Shuman:

Q. What is your name, age, residence, and occupation?

A. James R. Carpenter; age, 45; my business is teas; residence, Chicago. I have charge of the business of Robinson, Woodworth & Co., of Boston, importers.

Q. You have charge of their branch house in Chicago?

A. Yes, sir.

Q. How long have you been in the business?

A. Twenty years.

Q. In your experience in the business have you ever seen the word "Tycoon" used upon tea facings in the markets with which you have been familiar?

A. No, sir; only as they have been sold or purchased and introduced by Ingraham, Corbin & May. The first I knew anything about that mark being used, I think, was in 1880; about the first of what was called sun-cured teas; strictly Japan teas. Samples were sent to Boston and were brought into our office by one of the firm of Hyde, Heard & Southworth. Those were the first teas I saw of
that peculiar character. We had never imported anything
285 up to that time except basket and colored, and we regarded
it, of course, as a trade-mark of Ingraham, Corbin & May, from the fact that we had a trade-mark of our own.

Q. What would you say as to colored teas being a distinct class of merchandise from uncolored teas in the trade?

A. Well, in the trade they are a distinct class of merchandise, just the same as Rio coffee is a distinct class of coffee from Mocha coffee, and in Java coffee—there are different gradings in Java coffee.

Q. The same as colored cotton shirtings are different from bleached cotton shirtings?

A. Yes; the same in that ratio.

Q. Or as rubber boots are different from leather boots?

A. Well, not as much as that, because the material is entirely different. In the tea trade the leaf is the same in the start, but in the peculiar process of manufacture or firing you either produce an uncolored tea or a colored tea or a basket-fired tea. Originally it is one and the same thing.

Q. But the manufactured product is a distinct class of merchandise?

A. The manufactured product is a distinct class of merchandise; so quoted and so ordered. In sending out orders to Japan we indicate how many packages we want of the sun-cured or basket or colored.

Q. By sun-cured you mean to distinguish uncolored or pan-fired teas?

A. Strictly uncolored pan-fired teas.

Q. Now look at the Defendants' Exhibit A and state whether that is a colored or uncolored tea. Handing witness sample.

A. That is a colored Japan.

Q. That is a colored Japan tea?

A. Yes, sir.

Q. Now, please look at Defendants' Exhibit B and state whether that is a colored or uncolored tea.

A. I should call that a colored tea; very slightly colored. I think it would sell in many localities, probably, either way, but still it is a colored tea.

Q. Now, please look at the Complainants' — A and C and state whether or not the Complainants' Exhibit C resembles, in the general appearance of the merchandise, Complainants' Exhibit A.

A. This one with C on may be a little higher grade than the other, but there is a similarity between the two teas, as far as colored goes. As far as the color of the tea, they would be both classed as a strictly uncolored tea by the trade, or sun-cured tea. I have sold tea in every town of the United States that has got a wholesale grocery house in, I think, east of the Rocky Mountains, during the last twenty years.

Q. And during that time have you ever known or seen any tea, except this Ingraham, Corbin & May, with the word "Tycoon" on the facing of the tea?

A. Well, their manner of handling their tea has been such that I haven't seen but very little of their tea, but I have never seen that face on tea, or ever known of that face being used, in my experience in the trade, except by them. I knew of it; I knew it was the mark under which they placed teas of a certain class, certain grade of teas, back as far as 1879 or 1880, I think.

286 Q. And you say at that time that the teas which they imported under the name of Tycoon were recognized as a new departure in the manufacture of tea?

A. Yes, sir.

Q. That is the way I understood you to testify a moment ago.

A. Yes; they were the first dried tea, so-called sun-dried tea, I had ever seen in my experience in the trade.

Q. Do you know of the tea house in Boston of Israel, Nash & Co.?

A. Yes; I was the first salesman in that house there.

Q. How long were you with that firm?

A. Between two and three years. I sold the first goods for that house which were ever sold in the city of Detroit.

Q. What year were you connected with them?

A. I went with them either in 1866 or 1867, and I stayed into the year 1868, and then I went to Carter, Hawley & Co., of New York.

Q. You left them in 1868?

A. I think it was 1868 that I left Israel, Nash & Co. In those days it was not customary to place any particular mark except the initial letters of the name of the vessel upon the face, except in certain classes of Oolong teas that came in that were indicated largely by a chop mark, as it — called. There were certain districts or certain parties producing a higher grade of tea than others, and those teas always came under this mark.

Q. Do you know anything about the teas which were sold by Israel, Nash & Co. in the years 1870, 1871, and 1872?

A. Yes, sir.

Q. Are you able to say whether they sold tea under the name of Tycoon or faced with the word "Tycoon?"

A. I don't think they had a package during the time the firm was Israel, Nash & Co. or Flint, Boardman & Nash with any such mark at all as Tycoon.

Q. You so testify from your own knowledge of the teas which they imported and sold, do you?

A. Yes, sir.

Cross-examination by Mr. Hosmer:

Q. You have known Mr. Corbin for a great many years, have you not?

A. Yes, sir.

Q. And, of course, your examination of these teas is only what has been made in the presence of Mr. Hewitt, the notary public here, is it not?

A. I have never seen these teas before in my life before I saw them here.

Q. So your inspection is a merely casual inspection as such would be from such an inspection of the tea?

A. Yes, sir.

Q. What is your idea of the ability of Mr. Corbin to judge of teas, whether they were colored or uncolored?

A. I should say I considered him a good judge.

Q. And if he had made a careful examination of these teas and applied other tests to the tea, and came to the conclusion that it was colored tea, would you consider that he was a good judge?

A. Well, should consider that he has some knowledge
287 in regard to it that I was not possessed of.

Q. What particular knowledge of the teas of Israel, Nash & Co. did you have after you left that house?

A. Well, from the fact of being constantly in competition with them, more so than any other house, I having introduced their tea to the trade in the West; there was a good deal of anxiety to take all the trade I could away from them and to secure it.

Q. To secure it for Carter, Hawley & Co.?

A. For myself or Carter, Hawley & Co.

Q. I suppose it was — the custom in those days than it is now to sell goods by sample and not by the particular brand, is it not?

A. Well, sometimes I have found in trade that a brand helps the sale.

Q. Undoubtedly. Well, for instance, in the case of your Oolong teas, they come with a different brand, indicating the district they come from, and that hurts the sales?

A. Well, take it in our business. We are importers of the Butterfly chop of Japan teas, and many times the trade demanded the Butterfly teas, and we found that even with a tea placed in the cup in the same sale or at the same time of buying that Butterfly tea they help a sale when another tea of equal value would be passed. Most of the tea men understand that these goods of ours, for instance, are only a certain class of goods, and that they don't go below a certain grade and they become popular, and I should suppose it would be the same with any other brand of tea in the same way.

Q. What I had reference to in those days—in the days just after you left Israel, Nash & Co.—was that you sold by sample mostly.

A. Yes; by samples always.

Q. Then your attention was not called particularly to the mark?

A. Well, we bought a good many teas of Israel, Nash & Co. We bought a great many of their teas. They were importers in those days and we were not.

The signature of the witness was waived by agreement of counsel.

And the said M. M. Read, having been duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. Shuman:

Q. Please state your name, age, residence, and occupation.

A. M. M. Read; age, thirty-two; residence, Ypsilanti, Michigan; occupation, commercial traveler.

Q. Have you had any experience in the tea business?

A. Well, slightly; yes.

Q. To what extent have you traveled and sold teas; how
288 many years and where?

A. My experience has been in Michigan always during the past three years.

Q. Have you visited the principal towns and cities in Michigan in the course of your business of selling teas?

A. Well, yes, sir.

Q. In that time have you known of teas sold and called "Tycoon teas" of Corbin, May & Company?

A. I have; yes, sir.

Q. Are those teas generally known in the market in Michigan, to your knowledge?

A. Well, I should say yes; in a general way they are. Of course, there are towns where I don't know of them at all. They are not in the trade there, but in other towns they are very common.

Q. Did you know anybody who was travelling in the tea business in 1885 by the name of James McSkimin?

A. Yes, sir.

Q. For whom did Mr. McSkimin travel?

A. W. J. Gould & Co.

Q. Of Detroit?

A. Yes, sir.

Q. Have you met and talked with Mr. McSkimin in the course of your business about the Tycoon tea of Corbin, May & Co.?

A. Yes, sir.

Q. Now, please state where you met him and when and give the conversation.

A. Well, it is in a general way—that is, as all traveling men would naturally talk upon some subjects. I cannot name the town, but I should think, perhaps, Jackson.

Q. About what time?

A. And upon only one occasion that I remember of, although I presume it has been spoken of at other times, and that was, I should say, about a year ago now, just prior to the arrival of new teas. We were speaking about this Tycoon tea, and he made the remark, and perhaps I cannot name the words just as he did them, but he says, "We will have Tycoon tea for the trade in Michigan as well as Corbin, May & Company," or words to that effect. I cannot name the words exactly, but that was the substance. I rather scoffed at the idea or expressed surprise, and he further said, "It is a fact," he said; "we have coming;" and he named a number I don't remember—one or two hundred packages en route, and I said, "Not marked; the facing is not 'Tycoon,' is it?" And — said, "Yes, it is." Then followed a general kind of conversation.

Q. Did he say anything to you in regard to the use of the word "Tycoon" by other houses as against Corbin, May & Company's Tycoon?

A. Yes, sir.

Q. Well, go on and state just what was said, as near as you can.

A. I remember I said to him, after expressing this surprise, I said, "You have no right to use it. They have that term copyrighted."

Q. What did he say to that?

A. Well, he says, That don't make any difference," or words
289 to that effect; "we can use it, we have got it," or "we have it."

Q. Do you know whether he had at that time in his possession any of the facings of the tea that he said they had or were going to receive?

A. Well, I should judge not at that time, but I later saw that he had the facing. This was quite early in the season; perhaps about the first of May.

Q. Then you subsequently saw him when he did have the facing?

A. Yes, sir.

Q. And what was said at that time?

A. Well, I don't remember hardly; that is about——

Q. Well, give the substance of what was said in regard to that facing as to this word "Tycoon?"

A. The only time I remember of his displaying a facing was at Charlotte, and was selling tea to Lamb & Spencer, and he displayed the facing there that he had Tycoon tea. He simply said it was Tycoon tea facing to show what it would be.

Q. Did you ever see any of this Tycoon tea of Gould's after it was received and sold?

A. Yes; I saw it in Lamb & Spencer's store.

Q. Did you see it in any place else?

A. I don't remember.

Q. Did you see it in Moulton & Stanley's house?

A. I don't remember.

Q. What kind of tea was it you saw in Lamb & Spencer's as to quality and general character?

A. Well, I should—the character, I should consider it an uncolored tea. It was not a very high grade, however.

Q. Such tea as is sold in the market as uncolored Japan tea?

A. Yes, sir.

Q. About what time was it that you saw the facings—what time of year—the Tycoon chop facing?

A. That was in the latter part of July. I should say the latter part of July or the first days of August, but I should think it was in July.

Q. And this other conversation that you have testified to occurred some weeks prior to that?

A. Yes; that was earlier. He was saying then what they were to have; then later and I saw the facing of the tea. I saw it and drew it half a dozen times afterwards.

Q. From your knowledge of the business in Michigan, what would you say to the firm of W. J. Gould & Company being ignorant of the fact that Corbin, May & Co. sold the tea in Michigan under the name of Tycoon, and as to their having a trade-mark on that name?

Objected to as irrelevant, incompetent, and immaterial.

A. Well, judging from the conversation on different occasions, I would not consider that W. J. Gould or any one else connected with the tea business there was ignorant of the fact; that is the only way I can answer it.

290 Cross-examination by Mr. HOSMER:

Q. You say Corbin, May & Company don't sell in Detroit, do they?

A. Well, I could not answer that question.

Q. Well, do any of the members of the firm of W. J. Gould & Company travel on the road?

A. Mr. Cady goes out sometimes.

Q. Do any other members of the firm, that you know of?

A. Not that I know of.

Q. Do you know whether Mr. Cady is a tea man, or who is the tea man in W. J. Gould & Co.'s?

A. I cannot answer that; I don't know.

Q. It is usual, is it not, for one man in a firm to devote his special attention to tea, while others do not?

A. I should think, perhaps, that is so.

Q. What knowledge would any one of the firm have with reference to the teas, unless they should happen casually to see them? You never had any conversation with any member of the firm in regard to the Tycoon tea or called their attention to it or their speaking to you about it prior to this suit, did you?

A. I think not.

Q. You said, I believe, that Mr. McSkimin told you they were going to have 200 chests; that they had 100 chests en route?

A. Yes; I don't remember the amount; something like that.

Q. You did not expect that they were going to compete very largely with the trade of Corbin, May & Co. with 100 chests?

A. Well, could not say that was the number.

Q. You said it was 100 or 200; you would not say it was 200 instead of one, would you?

A. I should say it was more than 100; he named some hundreds; I don't know; he put it in round numbers; I think it was 200.

Q. Well, take the 200; you would not think that they could make a very large inroad upon the trade of Corbin, May & Co. with 200 packages of tea?

A. That I don't know anything about?

Q. Do you know anything about the amount of Tycoon tea that Corbin, May and Company sold?

A. No, sir; I don't know how many they sell.

Q. Do you know how extensively they sell it—have you any idea?

A. No; not to venture an assertion as to how many they sell.

Q. Well, do you know that they have a very large trade in Tycoon?

A. In some localities I am quite sure they sell quite a good deal.

Q. Well, if they did what might be called a large trade in that grade of tea, you would not consider they would be very much threatened in their trade by 200 chests?

A. I don't know what you mean by that.

Q. You would not think that any one would start out to compete with them with 200 chests of tea?

A. It would be a good number to start out with, and if it is a success 200 is a good, fair kind of test.

Mr. SHUMAN: A feeler.

A. Yes; I should think 200 chests would be.

Mr. HOSMER: You said you drew it in Lamb & Spencer's.
291 What kind of tea was it that you drew there?

A. That was an uncolored tea.

Q. Uncolored in the sense of being strictly uncolored, or uncolored in the trade term?

A. I believe I could not answer that question, but I should say the latter, though.

Q. In the sense in which it is generally used?

A. Yes, sir.

Q. Now, isn't it a fact that many teas are sold as uncolored teas with a slight addition of coloring to them?

A. It may be, but they should not.

Q. Well, isn't it a fact?

A. I don't know as to that. It was uncolored tea that was being drawn there; that was the general consideration.

Q. That was the general talk in reference to it?

A. Yes, sir.

Redirect examination by Mr. SHUMAN:

Q. I want to ask you, from your knowledge of the business, what was your understanding of the intention of W. J. Gould & Company in regard to introducing this Tycoon tea which Mr. McSkimin spoke of?

Objected to as incompetent, irrelevant, and immaterial and on the ground that there has been no basis laid for it.

Q. Have you formed any impression in regard to it? If so, let us know what it was.

Objected to the witness's impression.

A. Well, all I can answer is what Mr. McSkimon said in connection with this other conversation. He used this term or something to this effect. He said, "We will use that to buck Corbin, May & Company's Tycoon." I think that was just the term he used.

Q. You may state what you said to him to cause him to say that, if you recollect.

A. Well, what first commenced the conversation was, of course, the subject of this Tycoon tea and speaking of it being, where used, very popular and hard to get out of the market; that is about what brought up the conversation.

Q. And in that connection he used this assertion which you have quoted here?

A. Yes, sir.

Q. That they proposed to buck the Tycoon tea?

A. Yes; that was the subject of our conversation, to begin with, as it is talked generally by traveling men in speaking of any particular line of goods.

The signature of the witness is waived by consent of counsel.

292 And the said **Frank E. Fernald**, having been duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and say as follows:

Direct examination by Mr. **Shuman**:

Q. What is your name, age, residence, and occupation?

A. Frank E. Fernald; thirty-nine years; residence, Chicago; occupation, tea importer.

Q. How long have you been engaged in the tea business?

A. I commenced with Israel Nash & Company in 1868.

Q. How long were you engaged with Israel Nash & Company?

A. I was with them until the year 1871, when the firm of Flint, Boardman & Nash began, and I came to Chicago for them in 1871.

Q. Were you familiar with the teas which were imported and sold by Israel Nash & Company between the years 1869, 1871, and 1872?

A. Yes; I was in the office and quite familiar with the teas.

Q. If they had ever imported teas or sold teas which were faced with the word "Tycoon" on the chest, or which were called "Tycoon" teas by them, would you remember that fact, do you suppose?

A. Yes, sir.

Q. Now, you may state whether or not they ever imported or sold any teas so marked or so called.

A. I don't remember of ever seeing a package of tea marked that way; I don't think we ever handled a package marked that way.

Q. You may state whether, in your experience, you have ever seen or heard of any teas having been sold in the market east of the Rocky Mountains under the name of Tycoon or with "Tycoon" on the facing other than the tea of Corbin, May & Co.

A. I have never seen and I have never heard of tea sold under that name other than Corbin & May's teas.

Q. Please state how extensive has been the scope of your experience in the tea business.

A. Well, I managed the Chicago office of Flint, Boardman & Nash here from 1871 to two years ago, when I started in for myself, and they were large importers of teas.

Q. You say you have been familiar with the tea sold in this market, and in the market contiguous to Chicago, during that time?

A. Yes, sir.

Q. During that time you have never seen any teas which were faced or called "Tycoon" other than those teas of Corbin, May & Co.?

A. No, sir.

Q. Are colored teas known and recognized in the market as a distinct class of merchandise from uncolored teas?

Objected to as irrelevant and immaterial under the pleadings in this case.

A. Yes; they are.

Q. Please explain the difference—how they are considered a distinct class of merchandise.

A. Well, we have Japan teas of three distinct classes—that is, uncolored tea, colored tea, and basket-fired tea.

293 Q. And by characterizing colored tea as a distinct class from uncolored tea, do you mean in the sense that colored cottons are a distinct class of merchandise from bleached cottons?

A. Well, of course it is the same leaf, but only there is a different preparation in preparing them for the market.

Q. In the manufactured state they constitute a distinct class of merchandise, as I understand you?

A. Yes, sir.

Q. Please look at Defendants' "Exhibit A" and state whether or not that is a colored or uncolored tea.

A. That is a colored tea.

Q. Also look at "Defendant's Exhibit B" and state whether that is a colored or uncolored tea?

A. That is a colored tea.

Q. Now, please look at the Complainants' Exhibit A" and "Complainants' Exhibit C" and state whether or not "Complainants' Exhibit C" resembles "A" in general appearance.

A. Yes; "C" does resemble "A" in some respects; yes, it resembles it.

Q. Are those two exhibits colored or uncolored tea?

A. Uncolored tea.

Cross-examination by Mr. HOSMER:

Q. How long have you known Mr. Corbin?

A. Since 1871.

Q. You have known him pretty well, have you not?

A. Yes, sir.

Q. Had opportunities of judging of his merit as a tea expert?

A. Yes, sir.

Q. What do you think of him in that regard?

A. He is a good judge of tea, one of the best judges in Chicago market.

Q. And if Mr. Corbin told you that he had examined this tea and that he was satisfied—that he had examined this "Complainants' Exhibit C" critically, and had come to the conclusion that it had some slight coloring matter put in it, what would you think about his statement in that regard?

A. Well, I should think it was correct. Some of the teas that are sold for uncolored teas are slightly colored.

Q. So that those teas are classed in the trade as uncolored teas in which the the color is not apparent, are they not?

A. Yes, sir.

Q. On casual examination?

A. Yes, sir.

Q. You had charge of the Western trade for Israel Nash & Company and Flint, Boardman & Nash?

A. Yes; I was with them in the Boston office until 1871, when I came to Chicago for them.

Q. And you were not on the road, were you?

A. No, sir; I had charge of the Chicago office.

Q. So you don't know who sold the teas? If Charles M. 294 Garrison, doing business in Detroit during the years that you were in Chicago, bought teas of Flint, Boardman & Company or Israel Nash & Company—whatever the firm may have been—you don't know who it was that sold them, then, or exactly what the teas were that were sold?

A. Well, Mr. Cook was traveling for them at that time and sold teas in Detroit, and some of the teas were sold from the Chicago office and some from the Boston office—that is, after 1871.

Mr. SHUMAN: But in 1870–1871 Garrison didn't buy any teas marked "Tycoon" of Israel Nash & Company, did he?

A. I don't remember of ever having a package of tea marked "Tycoon."

Mr. HOSMER: Where do the Boston importers get their tea? Do they import it to Boston or get their tea through New York or San Francisco?

A. Well, nearly all the teas are imported or go through New York; nearly all the importers bring their teas in through New York.

Q. There is no importing of teas in Boston?

A. Well, one year we did have, I think, seven vessels, but of late years they have all come through New York.

Q. What were those teas—those seven vessels—China or Japan?

A. All kinds.

Q. You haven't made any further examination of either of these exhibits of teas than you have made in the presence of the commissioner, have you?

A. No, sir.

Q. While you have been testifying?

A. Yes, sir.

Mr. SHUMAN: I want to ask you whether Israel Nash & Company or Flint, Boardman & Company furnished the Chicago office with samples of all the teas that they imported?

A. Of nearly all the teas. We have samples of nearly all the teas but some teas which were sold out immediately in New York. That we would not get a sample of, but we have a sample of the stock on hand.

Q. So you had opportunities of knowing whether Israel Nash & Company had any teas which were faced "Tycóon?"

A. Yes, sir.

Q. And you say they did not have?

A. I don't remember of their having any.

The signature of the witness was waived by agreement of counsel.

295 And the said CALVIN R. CORBIN, having been duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did depose and testify as follows:

Direct examination by Mr. SHUMAN:

Q. You are the same Mr. Corbin who testified before in this case?

A. Yes; I testified before in this case.

Q. It was testified in this case by W. J. Gould that Corbin, May & Co. called their tea "sun-dried." I will ask you whether or not that is a fact.

A. That is a mistake. We have never designated them as sun-dried. We have ridiculed the idea, and have talked that it was a ridiculous term for tea, and also published it in the price-lists to that effect, that there was no such thing as adequately curing tea by the sun, and we have instructed and have talked the matter over with our salesmen to ridicule the idea; that other people might have sun-dried, but we hadn't.

Q. Do you know whether or not colored teas and uncolored teas are considered in the market as distinct classes of merchandise?

Objected to as incompetent, immaterial, irrelevant, and no basis laid for it in the pleadings.

A. It is so considered; one cannot be sold for the other. When one is wanted the other will not do.

Q. Look at the Defendants' "Exhibit A" and state whether that is or is not an uncolored tea.

A. That is unquestionably an artificially colored tea, colored with indigo or Prussian blue or some other similar color used. However, that is modified from what it was six or eight years ago, very much.

Q. Now, look at Defendants' "Exhibit B" and state whether or not that is a colored or uncolored tea.

A. It belongs to the same tea, but there is a little less color. The coloring of tea is much more perceptible when you have a standard. If you can get a leaf, and you have something which you are perfectly satisfied is an uncolored tea, then you can very readily see the difference; but without a standard it is considerably more difficult.

Q. Please look at Complainant's Exhibits "A" and "C" and state whether or not Complainant's Exhibit "C" resembles in general appearance Complainant's Exhibit "A."

Objected to because the witness has already testified in regard to the same.

A. Those teas are very nearly alike. Taking them separately, it would take a very good eye for color to be able to see they were not the same—that is, to look at one one hour and the other the next. This Exhibit "C" is a little darker by comparison than the "A." There may have been a slight use of plumbago in that tea, and there may not. It would be like that of one having a tea and taking a new uncolored tea and comparing them. There
296 would be to him a suspicion that there was a slight amount of atificial facing or color. There is not much color in black lead; they generally term it "facing."

Mr. **Hosmer**: To raise the grade?

A. To raise the grade or polish the tea.

Q. Is that Exhibit C such tea as is known in the market as uncolored tea?

Objected to as incompetent, irrelevant, and immaterial and because the witness heretofore, on his former examination, gave his opinion that it was colored tea.

A. Well, I said that; but that is such tea as passes for uncolored tea and would, as a rule. If any one was an expert or very familiar with teas they might have a suspicion raised that there might be a little touching up in it, but it possibly might not be true.

Cross-examination by Mr. HOSMER:

Q. As a matter of fact, one is sold for the other, is it not?

A. There are different degrees of coloring tea. They may be colored or faced. They sometimes term it facing or touching up very slighly so as to gloss it in imitation of an uncolored tea and raise the value of it in appearance by a little gloss that it imparts and a little smoother leaf. Those teas, we are informed by tea men—by the men who prepare the tea in Japan—that one of the ingredients or properties used is black lead or plumbago, and that would not show very readily. It is a very hard thing to detect, and I have come to the conclusion that it is much easier to detect this in the taste of the tea. As the tea grows older it gives it more of tart flavor or stale flavor.

Q. Well, these teas that are so slightly colored still pass in the general market under the general head or designation as uncolored tea?

A. They do, or they have done so, and they do still—frequently with practice, however. My observation is that this becomes less and less every year.

Signature waived by agreement of counsel.

297 STATE OF ILLINOIS, }
Cook County, } *ss*:

I, James Hewitt, a notary public in and for the county of Cook and State of Illinois, do hereby certify that on the 17th day of April, 1886, pursuant to the stipulation hereto annexed, personally appeared before me, at the office of P. L. Shuman, Borden block, Chicago, Illinois, Henry J. Brown, James R. Carpenter, M. M. Read, Frank E. Fernald, and Calvin R. Corbin, witnesses to testify on the behalf of the complainants in a certain cause now pending in the circuit court of the United States for the eastern district of Michigan, wherein Calvin R. Corbin *et al.* are complainants and Walter J. Gould *et al.* are defendants.

And I do further certify that the aforesaid witnesses were first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as they should be interrogated, and the testimony of the said witnesses was reduced by me to writing, and the signatures of the witnesses respectively were waived by agreement of counsel.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this twentieth day of April, A. D. 1886.

[SEAL.] JAMES HEWITT,
Notary Public.

Notary's fees, $19.00.

Endorsed: 2974. Received by mail, opened in open court, and filed May 3, 1886, Walter S. Harsha, clerk.

298 UNITED STATES OF AMERICA, } ss:
Eastern District of Michigan,

United States Circuit Court for the Eastern District of Michigan. In Equity.

CALVIN R. CORBIN *et al.*
vs.
WALTER J. GOULD *et al.*

To Dickinson, Thurber & Hosmer, solicitors for defendants.

GENTLEMEN: Please take notice that on Monday, May 10, 1886, at 10 a. m., at Blissfield, Michigan, I shall proceed to take the testimony of R. G. White, of Blissfield, and such other witnesses as may be produced on behalf of the complainants in the above-entitled cause, before a notary public, at the office of said R. G. White.

When and where you may be present and cross-examine, &c.

I am, very respectfully, P. L. SHUMAN,
Solicitor for Complainants.

Chicago, May 7, 1886.

We accept notice before any notary, waive signature to deposition and official certificate, and stipulate deposition may be given complainants' solicitor.

DICKINSON, THURBER & HOSMER,
Def'ts' Sol'rs.

299 UNITED STATES OF AMERICA,
Eastern District of Michigan:

United States Circuit Court, Eastern District of Michigan. In Equity.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners, &c., Complainants,
vs.
WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, & L. F. THOMPSON, Copartners, &c., Defendants.

Deposition of Robert G. White, taken under stipulation of counsel in the above-entitled cause, at Blissfield, Michigan, this tenth day of May, 1886, before me, Alfred A. Miller, notary public in and for the county of Lenawee, in the State of Michigan, on behalf of the complainants in said cause.

Present: Percy L. Shuman, solicitor for complainants; George S. Hosmer, solicitor for the defendants.

ROBERT G. WHITE, being first duly cautioned and sworn according to law, deposes as follows:

Examined by Mr. Shuman:

My name is Robert G. White; 42 years of age; business, merchant, at Blissfield, Lenawee county, Michigan.

Q. How long have you been in business in Blissfield?

A. About five years.

Q. Do you know the complainants in this cause?

A. Yes, sir; I know Corbin and May.

Q. Have you had any business dealings with them? And, if so, state the character of the dealings.

A. I have bought teas and groceries of them.

Q. What kind of teas have you bought of them?

A. "Tycoon" tea. I commenced buying Tycoon tea of them 2 years ago last January.

Q. Do you know the firm of W. J. Gould & Co., the defendants in this case?

A. Yes, sir; I do. I have dealt with them about four —.

Q. State what has been your method of dealing with them.

A. It has been conducted through traveling agent mostly.

Q. Has any member of the firm ever been here to see you about business with the firm?

A. I think Mr. Cady has been here twice or three times. He has been twice or three times within the last two years. I can't fix the dates exactly.

Q. Did he visit you in your store?

A. Yes, sir; he did.

300 Q. Who besides Mr. Cady have you done your business with?

A. With Harry West, once their traveling man, who lives at Eaton Rapids, Mich.

Q. How many times has Mr. West visited you during the past two years?

A. His regular time is twice a month, but he has averaged twelve times a year—perhaps more than that.

Q. Please describe the manner in which you keep the "Tycoon" tea exposed for sale in your store.

A. We have it in the cans, with a Tycoon tea advertisement posted on each can in plain view: it is as prominent as any other part of the stock. The word Tycoon is in large letters. We cut the advertisement out of the Commercial Bulletin and pasted it in the front of the cans. The cans hold a half chest of tea. We have kept three cans marked in that way all the time since we have had the "Tycoon" tea. That is the only tea we keep for sale or have kept during the last two years.

Q. Have you ever seen a tea facing marked "Tycoon" chop? And, if so, state fully the circumstances under which you saw it, by whom it was shown you, and what conversation took place at the time or times when it was shown to you, if there was any conversation.

A. Yes. I think it was in June or July last Mr. Gould's agent, Mr. West, was here, and I was buying goods of him. After we had got through with the list of goods he asked me if I didn't want to buy some "Tycoon" tea. I replied to him—I said, Are you selling "Tycoon" tea? He said, yes; and he took from his satchel or sample case this facing labeled "Tycoon" chop, and he further went on to say that anybody could sell "Tycoon" tea. Well, I said something like this: I thought that was stealing Corbin, May & Co.'s business; that I didn't think it looked just right, or words to that effect.

Q. Did you have the "Tycoon" tea on sale and the advertisements of it displayed in the store at the times when Mr. Cady called upon you, as heretofore testified?

A. Yes, sir; I did. I did ever since we commenced selling the tea. I have a large "Tycoon" tea sign, but I am not sure I had it when Mr. Cady was here.

Q. Did Mr. West carry the Tycoon chop facing away with him when he left.

A. Yes, sir; he didn't leave it with us.

Q. From your experience in the tea business, please state whether it is usual for traveling salesmen to display tea facings when taking or soliciting orders for tea.

A. As far as I know it is not usual. This was the first occasion I ever saw them displayed or shown. It struck me that this was done for the purpose of showing that he had tea under that brand. He didn't show me the tea itself. I don't think he showed it to me. I didn't request him to, as I didn't want the tea.

301 Cross-examined by Mr. Hosmer:

Q. You never had any conversation with any one of the firm of W. J. Gould & Co. with reference to "Tycoon" or "Tycoon chop" tea?

A. No, sir.

Q. You never had any conversation with any of their agents except the one you have testified to?

A. That is the only agent. I have talked with him since about this suit. He said they had quit selling the tea.

Signature waived.

State of Michigan, }
Lenawee County, } *ss:*

I, Alfred A. Miller, notary public in and for the county of Lenawee and State of Michigan, hereby certify that the above and foregoing deposition of Robert G. White was taken before me this 10th day of May, 1886, and that the signature of witness is waived by counsel present.

ALFRED A. MILLER,
Notary Public.

Endorsed: Gen. No. 2974. U. S. circuit court, eastern dist. Michigan. Corbin *et al. vs.* Gould *et al.* Deposition of R. G. White. Filed May 12, 1886. Walter S. Harsha, clerk.

302 *Final Decree.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the fourteenth day of June, in the year one thousand eight hundred and eighty-six.

CALVIN R. CORBIN and HORATIO N. MAY *vs.* WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and LOUIS F. THOMPSON	In Equity.

This cause came on to be heard at this term on pleadings and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the bill of complaint be, and the same is hereby, dismissed with costs against complainants, to be taxed, and that said defendants have execution therefor.

303 *Order Allowing Complainants' Claim of Appeal.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the fourteenth day of June, in the year one thousand eight hundred and eighth-six.

Present: The Honorable Henry B. Brown, district judge.

CALVIN R. CORBIN and HORATIO N. MAY *vs.* WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and LOUIS F. THOMPSON.	In Equity.

Now come the said complainants, by Percy L. Shuman, their solicitor, and claim an appeal to the Supreme Court of the United States from the decree of this court dismissing their bill of complaint in this cause; which appeal is by the court now here allowed, and the penal amount of bond on appeal is hereby fixed at the sum of five hundred dollars.

304 *Bond on Appeal.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, } *ss:*

In the Circuit Court of the United States for the Eastern District of Michigan.

CALVIN R. CORBIN and HORATIO N. MAY, Copartners,
vs.
WALTER J. GOULD, EDWARD TELFER, DAVID D. CADY, and L. F. THOMPSON, Copartners, &c.
} No. 2974. In Equity.

Know all men by these presents that we, Calvin R. Corbin and Horatio N. May, copartners under the firm name of Corbin, May & Co., of Chicago, Illinois, principals, and Charles B. Hull, of the city of Detroit, county of Wayne, and State of Michigan, surety, are held and firmly bound unto Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, copartners under the firm name of W. J. Gould & Co., of Detroit, Michigan, in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, administrators, executors, and assigns, jointly and severally and firmly by these presents.

In witness whereof we have hereunto set our hands and seals this 21st day of June, 1886.

The conditions of this bond are such that whereas the above-named Calvin R. Corbin and Horatio N. May have been allowed an appeal to the Supreme Court of the United States from the decree of the circuit court of the United States for the eastern district of Michigan, granted by said court in the above-entitled cause and entered of record therein on the 14th day of June, 1886:

Now, therefore, if the above-named Calvin R. Corbin and Horatio N. May shall prosecute their said appeal to effect and answer all damages and costs in case they shall fail to make good their appeal, then this obligation shall be void; otherwise to be in full force and effect.

CALVIN R. CORBIN. [SEAL.]
HORATIO N. MAY. [SEAL.]
CHAS. B. HULL. [SEAL.]

Approved.
H. B. BROWN.

Endorsed: Gen. No. 2974. U. S. cir. court, east. dist. of Mich. Calvin R. Corbin *et al. vs.* Walter J. Gould *et al.* Bond. Filed June 24, 1886. Walter S. Harsha, clerk.

305 The United States of America:

The Circuit Court of the United States for the Eastern District of Michigan.

Calvin R. Corbin and Horatio N. May
vs.
Walter J. Gould, Edward Telfer, David D. Cady, and Louis F. Thompson.
} No. 2974. In Equity.

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the claim of appeal to the Supreme Court of the United States of Calvin R. Corbin and Horatio N. May, the complainants in the above-entitled cause, from the decree of said circuit court dismissing their bill of complaint in said cause; that the above and foregoing transcript, consisting of 305 pages, is a true and correct copy of the record and proceedings in said cause as the same appear on file and of record in my office; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this thirteenth day of August, in the year one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and eleventh.

Seal of the Circuit Court, Eastern District of Michigan.

WALTER S. HARSHA, *Clerk.*

Endorsed on cover: E. Michigan C. C. U. S. No. 131. Calvin R. Corbin and Horatio N. May, copartners as Corbin, May & Company, appellants, *vs.* Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, copartners as W. J. Gould & Company. Filed October 8, 1886.

NOV 14 [illegible]
[illegible] H. MCKENNEY
[illegible]

Supreme Court of the United States,

October Term, [illegible]

No. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Argument and Brief for Appellants.

[illegible]

[illegible]

[illegible]

United States Supreme Court,

OCTOBER TERM, 1889.

NO. 131.

Calvin R. Corbin and Horatio N. May, Copartners as Corbin, May & Co., Appellants,

—vs.—

Walter J. Gould, Edward Telfer, David D. Cady, and L. F. Thompson, Copartners as W. J. Gould & Co.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

ARGUMENT AND BRIEF IN BEHALF OF APPELLANTS.

This is an equity suit for the infringement of the trade mark, "The Tycoon Tea."

STATEMENT OF CASE.

Prior to 1879 Japan teas were very much adulterated and colored artificially. The complainants, being large dealers, ordered their agents in Yokohama to have Japan teas prepared in accordance with their explicit instructions. The teas were to be of a certain picking, dried in a special manner, uncolored, and perfectly pure. There were no Japan teas of that kind or quality being imported into this country at that time.

The complainants adopted as a trade mark for that particular kind of tea "The Tycoon Tea," having the initials of their firm and the words, "Choicest Garden Pickings, Spring Leaf Japan Tea." (See copy of trade mark, page 6, transcript of record.) The complainants have imported great quantities of this tea annually since 1879 and sold it throughout the states contiguous to Chicago, especially in Michigan. The complainants' Tycoon Tea became very popular in consequence of its purity and other qualities, and has stood from the beginning as a pure article of unusual merit, and the trade mark has been a guarantee and protection to the public from adulterated, artificially colored Japan tea. (See deposition of C. R. Corbin, page 39, transcript of record.)

In August 1885 the defendants by their travelling agents offered in Michigan to the trade, Tycoon Tea, saying to the trade, that they were going to run the Tycoon Brand (see depositions, pages 19, 20, 46 and 47, transcript of record) and actually put upon the market teas with a facing on the package as follows: "Tycoon Chop, Extra Choice Japan Tea, Sun Dried, Garden Picked." (See page 9, transcript of record.)

The defendants sold tea as the Tycoon brand, the word "chop" meaning brand, as the genuine Tycoon tea of the complainants. The defendants' tea was of an inferior quality and, as we contend, was a fraud upon the public as well as upon these complainants.

The defense mainly relied upon prior use of the word "Tycoon" on packages of tea imported from Japan to California.

There was a preliminary injunction granted by the trial court, and testimony was taken at length. After the hearing of the case, the court below dismissed the bill without delivering an opinion. We are informed that the court dismissed the bill because of the prior use of the word "Tycoon" on the packages of Japan tea formerly imported at San Francisco.

EXCEPTIONS.

1. The court erred in entering an order dismissing the bill.

2. The court erred in dismissing the bill because the word "Tycoon" had been previously used upon packages of Japan tea imported at San Francisco.

3. The court erred in not finding the word "Tycoon" as applied to a particular kind of tea imported by the complainants, a good and valid trade mark, in which the complainants had acquired a good and valid title, which the defendants had infringed.

It is contended on the part of the complainants:

1. That the complainants had acquired a valuable interest in the good will of their trade in a specially prepared, pure, uncolored and unadulterated tea, and adopted a particular trade mark indicating to their customers that the article which was made by their authority and sold by them, possessed these superior qualities and are entitled to protection against anyone who attempts to deprive them of their trade or customers by using substantially the same name or such devices and representations as would deceive the trade. (*McLean* vs. *Flemming*, 6 Otto, 245; 10.)

2. Where a firm has adopted and used a trade mark for a number of years to denote a special kind of tea and built up a large trade, the firm should be protected in the use of its trade mark as against imitations, even though it be proven that said trade mark had previously been used

as a trade mark for the same class of goods provided the first user had abandoned it.

Symons vs. *Greene*, 28 Fed. Rep., 834.

The plaintiff in that case adopted the word "Eureka" to denote a special kind of cement. He was held to be entitled to an injunction even though another firm had used it for several years before to designate a certain kind of cement, but had discontinued its use.

3. The prior use must be either such continued use as to cause the word to become descriptive of kind or quality, or a continued use of the word as a trade mark by some one having the prior right to its use.

Liebig's Extract became descriptive of a kind of extract put up under a certain formula.

In *Manufacturing Co.* vs. *Trainer*, 11 Otto, 51, it was held that "A. C. A." designated ticking of a particular quality. Fairbank's scales and Singer's sewing machine had by long use become descriptive of the particular kind of machines; for that reason they could not be held as trade marks.

4. The word "Tycoon" as used on teas prior to its adoption by the complainants as a trade mark had no significance whatever. It was not used as a trade mark by any one, neither had it become descriptive of any kind or quality of tea. Its prior use, therefore, was not of such a character as would deprive the complainants of the right to protection in its use as a trade mark.

Defendant's witness, Taber, (page 185, transcript of record), testifies that the word "Tycoon" appeared upon labels and facings of packages of tea imported prior to 1882.

"Int. 25. In your trade did you have an especial " kind of tea known as Tycoon tea?

"A. No."

Thomas B. Coghill, another of defendants' witnesses, testifies, (pages 191).

"Cross-int. 9. Was the word Tycoon, as applied to " tea, ever in any sense of the word a trade mark?

"A. No, sir.

"Cross-int. 10. Was it ever claimed by any body that " he had the right to use that as a trade mark?

"A. Not to my knowledge.

"Cross-int. 11. Was Tycoon tea as such ever known " as indicating the special brand of tea differing as such "from any other brand of tea?

"A. Not to my knowledge.

"Cross-int. 12. Then there was never anything " known as Tycoon tea on this coast?

"A. Nothing as far as the word is concerned."

Another of defendants' witnesses, Bela Wellman, (page 195), says:

"Cross-int. 4. And no particular importance was "attached to the use of the word Tycoon as such?

"A. No, sir.

"Cross-int. 5. And the "Tycoon" tea was not different from other tea on this coast?

"A. No, sir; it was a good brand of tea; that is all.

"Cross-int. 6. And Tycoon tea as such was not different from any other tea?

"A. No, sir.

"Cross-int. 7. And nobody on this coast ever "claimed any exclusive right to the use of the word?

"A. No, sir; I never heard of it.

"Cross-int. 8. Was there ever in your experience "any special importance attached among the traders and "retailers to the word Tycoon appearing upon the "facings?

The use of a man's own name in such a way as to interfere with the business of another of the same name.

The complainants had a valuable reputation and good will established, and the defendants clearly entered the same market in a manner intended to deceive the trade and injure the complainants.

Wm. H. Hamilton testified (page 115 and 127, trans. of record): Tea merchant, Jackson, Mich.: That W. J. Gould's man "came in and said he could sell me Tycoon tea now. Well, I said, that was all right, but I doubted it very much." He also testified that the sale of a tea of the same general appearance as Corbin, May & Co.'s tea, under the name Tycoon, in the same market would injure their trade "very much."

Geo. W. Shekell (page 129) testifies: That he "asked for Tycoon tea" and got Tycoon chop.

Allen Raymond (page 131) testified: That Gould's man said that "he had something to buck against the Tycoon now." (See deposition of William Gamble, page 132.)

The above quoted testimony established the deceit and fraud of the defendants.

We ask that the decision below be reversed, and the case remanded with instructions.

Lewis L. Coburn,
of Coburn & Thacher,
Of Counsel for Appellants.

Office Supreme Court U. S.
FILED.
NOV 19 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 131.

CALVIN R. CORBIN AND HORATIO N. MAY,
APPELLANTS,

vs.

WALTER J. GOULD, EDWARD TELFER, DANIEL D.
CADY, AND L. F. THOMPSON, APPELLEES.

Appeal from Circuit Court of the United States for the Eastern District of Michigan, in Equity.

BRIEF FOR APPELLEES.

ELLIOTT G. STEVENSON,
DON M. DICKINSON,
Of Counsel for Appellees.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 131.

CALVIN R. CORBIN AND HORATIO N. MAY,
APPELLANTS,

vs.

WALTER J. GOULD, EDWARD TELFER, DANIEL D. CADY, AND L. F. THOMPSON, APPELLEES.

Appeal from Circuit Court of the United States for the Eastern District of Michigan, in Equity.

BRIEF FOR APPELLEES.

Complainants, who have used the word "Tycoon" inclosed in a transverse diamond as a trade mark upon their tea, seek to enjoin defendants from the use of the word "Tycoon," as used by them in connection with the word "chop." Although the bill claims there is a similarity in defendants' label, a casual inspection of the respective facings will convince the court that the only point of resemblance is in the use of the word "Tycoon." These are shown in the Record as schedules, between pp. 114 and 115. Facings more dissimilar could hardly have been devised.

Complainants' (Schedule A) is printed on plain paper, while defendants' is water marked in color. The proprietorship of the complainants' tea is indicated by the letters I., C. & M., representing Ingraham, Corbin & May, the predecessors of the present firm, while defendants' firm name appears prominently upon its facing (Schedule B). It cannot for an instant be contended that defendants have attempted to mislead the public as to the origin of their merchandise, or have been guilty of any unlawful imitation, unless the use of the word "Tycoon" can be so held. Further comments upon the marked difference is unnecessary; a glance is all that is essential to establish this point. Defendant Gould took this word without any knowledge of complainants' claim, knowing it to have been commonly used in the tea trade, and that complainants could not acquire a trade mark therein.

His version of the way he came to use the word is given on pp. 155-156, and is corroborated by the witness Spooner (p. 181, and pp. 210-211). The evidence of the common use of the word, as a brand for tea prior to the attempted adoption as a trade mark by complainants, is overwhelming. There is naturally a certain similarity in the size and shape of the respective packages, but all packages of tea apart from the facings have a general resemblance to each other, as have barrels of flour, boxes of tobacco and similar packages of merchandise, and the only point made in the lower court, or claimed, was in the use of the word "Tycoon." We beg leave to refer to the testimony on the use of the word.

PRIOR USE.

"Tycoon" has been used as a brand or name for Japan tea for over twenty years, and particularly on the Pacific Coast. A considerable amount of testimony has been taken on this point, which cannot be shaken. We will give the substance of the testimony of the several witnesses.

TESTIMONY OF JACOB S. TABER (pp. 184–186).

Residence, San Francisco; age, fifty-one; a merchant and importer of tea since 1860 down to 1882; member of the firm of Philips, Taber & Co. from 1869 to 1875, and of Taber, Harker & Co. to 1882. Imported large quantities of tea. Am familiar with the word Tycoon as applied to tea. Have used the word Tycoon as applied to tea in my business. First used it in 1869. Continued to use it until 1882, when I went out of business. The word Tycoon always appeared upon the labels and facings of packages in which this tea was sold. We imported it from Japan, and through Smith, Baker & Co.; whether they fired it I do not know. Sold the tea all through California, Idaho, Montana, and everywhere that San Francisco could reach a market. I did not have a brand of tea which I call Tycoon tea. I did not have a special kind of tea known as Tycoon tea. Now you ask me the question--but the word Tycoon was used indiscriminately by everybody. Mine was the "I. X. L. Tea." I used that word Tycoon indiscriminately, and everybody had a right to use it. It was a name adopted without any thought of advantage, and was considered anybody's mark, to which individuals attached their own brands *ad libitum.*

Have been with H. Levi & Co. since I went out of business in 1882. *They have used the word Tycoon, as applied to tea, all the time since I have been with them.*

Q. Do they sell Tycoon tea as such now?

A. Under our name, under our own trade-mark name, but the word Tycoon is used by us all the time. I think it has been used by everybody in California. *It is used on Japan tea, and was by my firm from* 1869 *to* 1882.

TESTIMONY OF THOMAS B. COGHILL (pp. 188–90).

Residence, Oakland; age, fifty; business, grocer, in San

Francisco; member of firm of Coghill & Simon since 1865. Have imported teas since 1869 in considerable quantities. Have used the word Tycoon on tea. Used it on the outer labels and inner paper packages of pounds and half pounds. The tea was packed in pounds, half pounds and third pounds. First used it on the first importations in 1869. We used the word Tycoon in that connection at the present time. Have not used it continuously since 1869. I do not remember when it stopped or why. It was left to the discretion of the brokers. I do not believe we used the word Tycoon in 1879 as applied to tea. I remember it among our first importations, and parties would order, frequently saying, "Send me a package of Young Hyson, Oolong and Tycoon."

To complainant's solicitor: It was all precisely the same tea; those names possessed no significance as far as the tea was concerned. It was Japan tea.

For several years it was so used by other houses in San Francisco.

Never claimed any exclusive right to use the word. Never made a trade mark of it, or attempted to.

THE TESTIMONY OF BELA WELLMAN (pp. 193–195).

Residence, Fruitvale; age, sixty-two; business, wholesale grocer, in San Francisco, since 1849. It has been Wellman, Peck & Co. since 1862. We have imported teas in large quantities from Japan and China. We have teas packed under that head for us in Japan. We started that ourselves some fifteen or twenty years ago. The name Tycoon appears on the facings outside and on the papers inside. We have had it packed in pound papers and half-pound papers. *We use it in that connection at present. Have done so continuously for fifteen years.* It is Japan tea. It has been applied by various other houses in San Francisco as far as my knowledge goes. This tea is packed in Japan by Smith, Baker & Co. It has a mark on it besides Tycoon. " W., P. & Co." and a cross, and " W. P." in a heart.

I do not known that there is any demand among customers for Tycoon tea as such. They generally order Tycoon tea with our trade-mark on it.

TESTIMONY OF GEORGE H. MURDOCK (pp. 197–99).

Residence, Alameda; insurance agent; age, thirty-eight. Was assistant bookkeeper from 1871 to 1884; for Phillips, Taber & Co., Taber, Harker & Co., and Asa Harker & Co., the one succeeding the other. I was not on the general books. I kept the books of all importations entirely. They were about the heaviest of the importers of teas. I kept the books of all the importations. The word "Tycoon " was on the labels of the boxes, and, I think, on the packages of teas. That is, when it comes in pounds or half pounds as they come, as in our brand. One brand was I. X. L. Tycoon tea, imported by Taber, Harker & Co. The word was so used from about 1866 to 1884, the date of their going out of business. That was the last house.

Q. Was this tea imported as Tycoon tea during these years, under that name?

A. Yes. I was going to say that I am relying on my memory entirely, and have not refreshed it at all. But I think I am perfectly safe in saying so.

I do not think that they had a demand among customers for Tycoon tea. I think that was merely a secondary consideration. I think the brand "I. X. L." was what it was known by. Not any more than one other brand of A. X. in the block, which was known as Yamosharo.

It was Japan tea. It was prepared by Smith, Baker & Co., Yokohama. I think the work Tycoon has been in very common use by various houses in San Francisco.

TESTIMONY OF GEORGE A. MOORE (pp. 204–206).

Residence, San Francisco; thirty-two years of age; importer of teas and coffees, with E. L. G. Steele & Co. The house has only been in existence since the beginning of 1885. They were successors to C. Adolph Low & Co.; was with them fifteen years. They imported teas in considerable quantities. They used the word Tycoon on teas in 1870. Tea was prepared in Yokohama by Walsh, Hall & Co. Tycoon was a descriptive name given to the tea. I looked on the invoice book this morning to refresh my memory, and found it was used until 1875, as far as I could find. In our case there was another mark besides "Tycoon." It was "Diamond X." The "Diamond X" was the real trade-mark, and the word Tycoon, although it appeared also on the label, was used as an embellishment. We never claimed a trade-mark in the word Tycoon. It was used to describe a certain quality of tea. I was not acquainted with the kind of tea called "W. P. C. Tycoon Tea," William Peck & Co.'s tea. Never compared our tea with "I X L."

TESTIMONY OF ADDISON MARTIN (pp. 201–202).

Residence, San Francisco; don't like to give my age; I am over twenty-one years of age; salesman in Lebenbaum Bros.' grocery store. They have only been in business six months. Was with C. J. Hawley three years before that. Been in business for myself before that under the name Co-operative Grocery Store. Prior to 1868–1870, or since that, I cannot answer. From 1868 to 1870 I sold teas, and on various descriptions of packages the word Tycoon was used. I cannot tell whether it has been used since that. There was at that time no particular demand for tea marked Tycoon. That tea was Japan tea. In addition to boxes, I think there were several styles of jars marked "Tycoon."

But beyond this oral testimony we have the certified copies of invoices, declarations and consular certificates from custom house at San Francisco, supporting these witnesses. On p. 171 of the record, in the invoice there given the use of the word "Tycoon," as applied to Japan tea, is shown. So also the invoices on pp. 174, 176 and 178 disclose the same use of the word.

All the Tycoon teas of complainants are prepared by Smith, Baker & Co., of Yokohama (see deposition of complainant Corbin, pp. 39–42). But the testimony of Jacob S. Tabor, Bela Wellman, George H. Murdock, and these consular certificates show no question but that Smith, Baker & Co. have used this word on teas for others long prior to their use by complainants. Smith, Baker & Co. do not deny this.

The cross-examination of complainants' counsel would seem to indicate that they contend that complainants might have a trade mark in the word "Tycoon" in their own territory, to the exclusion of the California merchants whose trade has not yet extended beyond the Rocky Mountains. This is preposterous. If C. A. Low & Co. had a right to sell "Tycoon" tea in California, they had the same right to sell to Gould in Michigan.

But again there was a prior and common use here.

THE TESTIMONY OF WINSLOW WRIGHT (p. 147).

Live in Chicago; forty years of age; salesman. Been in tea business since 1865. I sold teas with the name Tycoon on them in Detroit, Milwaukee, and Chicago, during the tea season of 1871 and 1872. Sold them to jobbers in those places; sold as agent. Was employed by Ezra Wheeler & Co., New York. The word Tycoon was upon the facing, as we sold them from here. We had a distributing point here at Chicago.

THE TESTIMONY OF CHARLES M. GARRISON (pp. 148–149).

Have been in the grocery business in the neighborhood of twenty-five years. Am forty-eight years of age. Am familiar with the teas used in this section of the country, as a wholesale dealer. My residence has been in Detroit all of the time. Tycoon is a name that has been commonly used in Japan teas ever since I can remember—a very few years after they first appeared in this country. I should say for twenty years back. I was in the grocery business at that time. It was not what you might call a common term as long ago as that, because the first Japan teas imported were a kind of nondescript tea in this country. Afterwards, in getting different grades, they began to classify them, and give them these distinctive names: Spring Pickings, Silver Leaf, and Tycoon, and fancy names of that description. I had facings made for them in 1870. It was a common term for those teas at that time. I purchased them of that name in New York, and also in San Francisco and Boston.

THE TESTIMONY OF WILLIAM C. HOUSE (pp. 152–153).

Residence, Detroit; age, forty-eight. Been engaged in grocery business fifteen years, from 1868 up to about seven years ago. During that time I was familiar with the teas that were in this market. I would state that I have seen the word Tycoon used on teas during the time I was selling them, and I think the first I ever bought I think was in the shape of a package of five pounds, also a little jar of teas. Very frequently the name of the vessel would be on the top, the words fine Tycoon sun-dried teas would be under it, but the word Tycoon would be upon it. It was common to Japan teas. I did not value the name particularly. I should not in buying it from that name. It would not influence me any. Never saw it upon anything but Japan tea. It continued up to the time I quit business, and I have seen it since, but I never gave it any particular thought.

THE TESTIMONY OF WALTER J. GOULD (pp. 154, 155.)

Have been in the grocery business twenty-two years as a wholesaler; am one of the defendants in this case. Have been familiar with the various brands of teas which have been sold in the Detroit market for twenty-two years, in which I have been engaged in business. Tycoon is applied as a brand, that is all; as a fancy name; for instance, Mikado, Tycoon or Strawberry, something of that kind; Humming Bird, Peacock.

Of my own knowledge I could not recall any instance in which the word Tycoon has been applied to teas, only as to one case, that is in 1867 or 1868. It was such an instance as has been spoken of here with regard to the Benefactor. The name of the vessel was the Glenisla. The word Glenisla was on top, and underneath it was Tycoon Japan tea. I sold those teas. The firm of Gould & Fellows.

Have recently purchased two packages of Tycoon tea. Exhibits "A" and "B."

Obtained one from Levi & Co., and the other from Coghill & Simon. They were purchased for me by Mr. Ballou. These chests were offered in evidence and marked Exhibits "A" and "B."

TESTIMONY OF THOMAS LOWE JR., (pp. 212–215).

Business, wholesale grocer, of firm of Lowe Brothers & Co. Have been in the business altogether twenty-two years. Have been with Wheaton, Leonard & Burr, Burr & Leonard, W. W. Wheaton & Co., and the present firm of Lowe Brothers & Co., all in the city of Detroit. I have here the tea book of the old firm of Wheaton, Leonard and Burr. I remember a use of the word "Tycoon" by that firm as applied to tea.

The witness produced a book and the page to which he refers is marked "Exhibit A, Lowe."

Exhibit "A"—Lowe.

April 15, 1885.

11/9	Y. H.	S. H. Talbot	95	16	14	$1 15
3/37	Y. H.	Thetis	99—100	15	14	1 80
3/84	Y. H.	Thetis	87—88	14	13	1 85
3/410	Y. H.	Thetis	73—76	16	14	1 60
3/87	Y. H.	Thetis	48—49	16	14	1 90
11/4	Y. H.	*Tycoon*	45—46	16	14	1 25
11/10		Travistock	393	16	14	1 20
9/2	Y. H.	Tyndale	76—8	16	14	1 00

This book was begun in 1865. It was continued with Wheaton, Leonard & Burr, and Burr & Leonard until 1870.

There have been no entries in the book since 1870, that I know of. Here is an entry of "Tycoon," made by myself previous to 1870, while I was keeping their books.

Page marked "Exhibit A" is offered in evidence.

"Tycoon" was the name or brand on the face of the tea. It was applied to a Young Hyson tea. The entry is in my handwriting.

TESTIMONY OF HENRY C. LOWE (p. 215).

Age, thirty-nine; reside in Detroit. Am a wholesale grocer; have been engaged in the business thirteen years with present firm, and two years previous to that with L. J. Staples & Co. Present firm name is Lowe Bros. & Co.; years ago the word "Tycoon" was a name we used on caddies considerable, as I remember it. We had a number of fancy names. We used Mikado, Tycoon and several other of the Japanese and Chinese names that were used with the hieroglyphics on the caddies and chests to represent, as near as we could, original packages.

I remember it fifteen years ago, when I first went in business, we had those caddies in the store with the word "Tycoon" on them. A tea caddy is a small package, four or five different sizes—ten, fifteen, twenty and twenty-five pounds.

This testimony, we submit, shows not only a prior and continuous use, but a common use by all who pleased.

But the learned counsel claims that this testimony shows the use of the word as applied to colored teas, and claims that uncolored teas are a different class of merchandise. Let us glance first at the testimony and see how this is borne out, and then consider his legal position.

Henry C. Lowe testifies, p. 216: We put all kinds of teas in those caddies marked "Tycoon."

Wm. C. House testifies, p. 153: The tea I had in 1868 or 1869 was an uncolored tea.

The court will observe that all the testimony shows that the lighter or less colored Japan teas is of comparatively recent date, and that formerly all Japans were colored.

CLASS OF MERCHANDISE.

We submit that there can be no distinction as to class between colored and uncolored teas.

In the first place, we beg leave to call attention to the statement and declaration and certificate of registry, pp. 6, 7, 8 and 9. The court will observe that in the statement, p. 8, complainants have sought to restrict the class of merchandise to which they appropriated their trade mark, to uncolored tea. But in the certificate of registry, p. 6, the commissioner of patents has refused to consider uncolored tea as a class distinct from colored, but has permitted the registry for tea.

Again, what constitutes uncolored tea? Is it that tea which appears to be uncolored, or that which is devoid of coloring matter?

Complainants' witness Fernald, p. 230, testifies as follows: Some of the teas that are sold for uncolored teas are slightly colored, *so that those teas are classed in the trade as uncolored* *teas, in which the color is not apparent, on casual examination.* If the mere appearance be the criterion, it is nonsense to talk of classifying teas according to complainants' theory; it would be repugnant to the fundamental principles of the law of trade marks to create a classification which in itself is a fraud and a deceit.

If we take the other standard, that which is devoid of coloring matter, as a basis for the proposed classification, then defendants' teas are not of the same class as complainants. Corbin testifies as to the absolute purity of his teas, and freedom from all artificial coloring matter (Corbin, pp. 39 and 55). He testifies defendants' teas have appearance of being slightly faced. (P. 56.) Adopting the trade classification of Fernald, Gould calls his tea uncolored, but says (p. 165) there is little stuff (coloring matter) thrown in. Even on this basis complainants would not be entitled to relief.

In *Carroll vs. Ertheiler*, 1 F. R., 688, it was held that smoking tobacco and cigarettes were of the same class, reversing the decision of the commissioner of patents, who had registered defendant's Lone Jack cigarette label.

In *The Collins Company vs. Oliver Ames & Son's Corporation*, 20 Blatch., 542, s. c., 18 F. R., 561, where complainants made edge tools, but not shovels, using the trade mark "Collins & Co.," and defendant made shovels and stamped them with words "Collins & Co.," for the Australian market, it was held that the use of the mark was unlawful; that the right to extend their manufacture to digging tools was possessed by complainant, and an injunction and account of profits was decreed.

On the same point may be cited the case of *Amoskeag Mnfg. Company vs. Garner et al.*, 57 How. Pr., p. 297. Complainants were manufacturers but not printers of cotton cloths, and defendants printers but not manufacturers of the same. Complainants had used the word Amoskeag on their goods, and the defendants did likwise. An injunction was granted but was dissolved on the ground the class of goods was not the same, but in this case the decision dissolving the injunction was reversed and goods held to be of same class.

The patent office has permitted the term "alcoholic spirits" to include bourbon, wheat and rye whiskies, wines, brandies and gins.

Re Boehm & Co., 8 O. G., 319.

If complainants' theory were true, any one manufacturing, for example, colorless malt whisky under a trade mark favorably known, might be deprived of his just protection by another who should add to a spurious malt whisky a slight amount of harmless coloring matter.

A little more or a little less coloring matter in the tobacco from which Ertheiler made the Lone Jack cigarettes would have left Carroll remediless. We may multiply such examples of the inevitable result of holding to defendants' theory but it is useless. Complainants' position in this regard is without authority and without force.

COMPLAINANTS' TRADE MARK.

Observe complainants' claim as to the trade mark in the statement, p. 8: "Our trade mark consists of the letter and words and arbitrary symbols 'The Tycoon Tea, I. C. & M., C., Japan Tea,' ornamental scroll-border, transverse diamond shape." "The letters or words I. C. & M., C., Japan Tea" may be omitted, without materially altering the character of our trade mark, *the essential features of which are the symbol of a diamond and the arbitrarily selected word "Tycoon."* We do not doubt that they may claim a trade mark for this combination: